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No.

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In the Supreme Court
OF THE
United States

OCTOBER TERM 1984

CHEVRON CORPORATION, et al.,
Petitioners,

vs.

ARIZONA, CALIFORNIA, FLORIDA, et al.,
Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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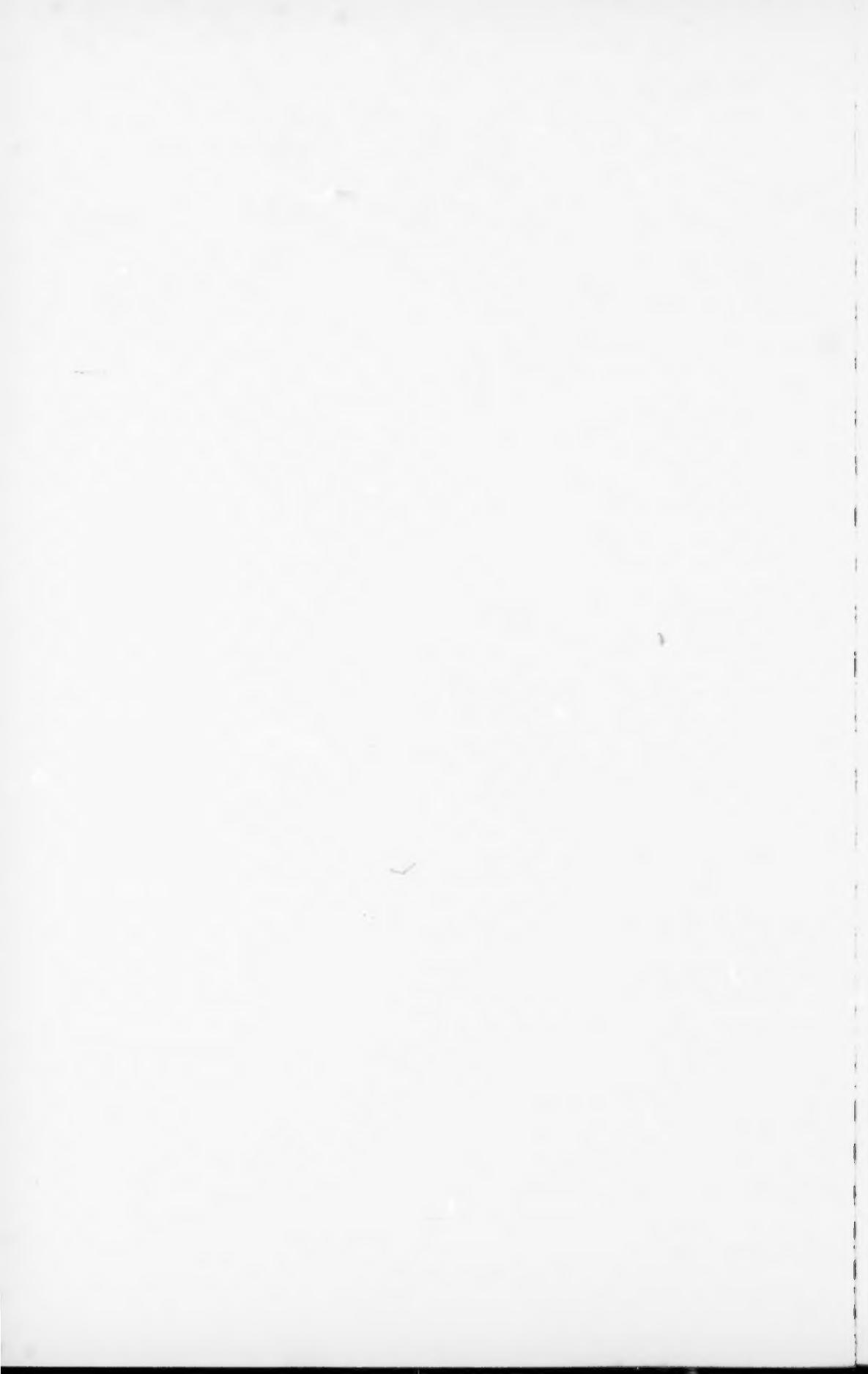
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QUESTION PRESENTED FOR REVIEW

In this case of first impression, does the Seventh Amendment guarantee the right of jury trial to state governments, even though the historical background of the Seventh Amendment shows that the Framers intended to extend the right of jury trial only to private parties, and not to states or other government entities?¹

¹Petitioners in the proceeding below were Atlantic Richfield Company, Cities Service Company, Exxon Corporation, Gulf Oil Corporation, Mobil Oil Corporation, Shell Oil Company, Standard Oil Company (Indiana), Standard Oil Company of California (now known as Chevron Corporation), Sun Company, Inc., Texaco Inc. and Union Oil Company of California.

Respondents in the proceeding below were the States of Arizona, California, Florida, Oregon and Washington.

Thirty-four states, in addition to the states named above, and the City of Long Beach, California appeared as amici in the proceeding below.

A list of petitioners' subsidiaries (except wholly owned subsidiaries) and affiliates is contained in Appendix C (p. A-27).

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OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is printed in Appendix A ((9 Cir. 1984) 738 F.2d 1021) (p. A-1). The order of the district court is printed in Appendix B (p. A-25).

JURISDICTION

The basis for subject matter jurisdiction of this antitrust action in the district court is 28 U.S.C. § 1331. The opinion

of the Court of Appeals for the Ninth Circuit was entered on July 24, 1984. No rehearing was sought.

This Court has jurisdiction pursuant to § 1254(1) of Title 28 of the United States Code.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Seventh Amendment to the United States Constitution, which provides:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

This case also refers to other portions of the Bill of Rights which are set forth in Appendix D (p. A-75).

STATEMENT OF THE CASE

Arizona, California, Florida, Oregon and Washington commenced separate actions in Federal court charging certain oil companies with conspiring to fix prices in violation of the Sherman Act (15 U.S.C. § 1). The claims of each state are asserted on its own behalf and as *parens patriae*. The actions were transferred to the Central District of California for coordinated pretrial proceedings under 28 U.S.C. § 1407.

All defendants waived their right to a jury trial. Plaintiff states demanded a jury trial. Defendants moved to strike the states' jury demands on the grounds that neither the Seventh Amendment nor any Federal statute grants the right of jury trial to state governments in an antitrust action. The district court denied the motion to strike and

certified the issue for interlocutory appeal under 28 U.S.C. § 1292(b). The court of appeals granted permission to appeal and affirmed, holding that the Seventh Amendment grants states the right to jury trial.²

REASONS FOR GRANTING CERTIORARI

This case presents a question of first impression and of substantial importance to the administration of justice in the Federal judicial system. The current congestion in our Federal district courts is attributable in large part to the use of jury trials.³ Dockets are jammed with jury trials demanded by private parties, a right guaranteed by the Seventh Amendment. But where, as here, the private parties have waived that right, it is an unnecessary waste of judicial resources to require a jury trial upon the demand of a state government. Such a demand has no constitutional or statutory authority.

The historical background of the Seventh Amendment compels the conclusion that the Framers did not intend to extend the right of jury trial to states or other government entities. That right is "fundamental and sacred to the citizen" (*Jacob v. New York* (1942) 315 U.S. 752, 753 (emphasis where it appears in quotations in this brief has been added unless otherwise noted)).

²The court of appeals also held that no Federal statute provides states the right to trial by jury (Appx. A, p. A-10).

³Seventy-four percent of all trials lasting four days or longer in Federal district court for the 12-month period ending June 30, 1983 were jury trials (Annual Report of the Director of the Administrative Office of the United States Courts (1983) Table C-8). Conversely, only 31 percent of trials lasting three days or less were jury trials (*id.*).

In a case decided less than 30 years after the adoption of the Bill of Rights, this Court stressed that the right to jury trial was:

"intended to secure the *individual* from the arbitrary exercise of the powers of government" (*Bank of Columbia v. Okely* (1819) 17 U.S. 235, 244).

And in the words of Chief Justice Warren:

"The various protections of the Bill of Rights, of course, provide checks * * * for the protection of the *individual*" (*Lewis v. United States* (1966) 385 U.S. 206, 209).

In like vein, Justice Douglas stated that the purpose of our Bill of Rights: "was to take Government off the backs of people" (*Columbia Broadcasting System v. Democratic Committee* (1973) 412 U.S. 94, 162 (concurring opinion)).

The court in *United States v. Griffin* (W.D.Va. 1926) 14 F.2d 326, 327, adopted those principles and refused to extend to the government the right preserved in the Seventh Amendment:

"The first ten amendments were intended to protect the people from governmental aggression * * *. [I]t is, to my mind, a mere perversion of the purpose and intent of the Seventh Amendment to contend that it gives the government a right to a jury trial in any case."

The decision below was based on the proposition that the Seventh Amendment preserves the right to jury trial of those issues which were triable by jury at common law, i.e., the "issue test." But the issue test does not determine *to whom* the right to jury trial is given. Before the issues are examined, it must be determined whether the party

seeking a jury trial is one to whom the Framers intended to secure *the right* of jury trial (Rule 38(a), Fed.R.Civ.P.). The Seventh Amendment did not grant that right to states or other government entities.

**THE SEVENTH AMENDMENT RIGHT TO JURY TRIAL
DOES NOT EXTEND TO GOVERNMENT ENTITIES**

This Court has consistently interpreted the Bill of Rights in accordance with the purposes and intentions of the Framers at the time it was adopted (see *INS v. Chada* (1983) U.S., 103 S.Ct. 2764, 2782-2788; *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 564-573; *Legal Tender Cases* (1870) 79 U.S. 457, 531-532).

The history underlying the adoption of the Bill of Rights shows unequivocally that the right to jury trial was preserved only for the individual. The Framers traced the citizen's guarantee of jury trial back to the Magna Carta. As stated by Justice Story:

“[Trial by jury] was from very early times insisted on by our ancestors in the parent country, as the great bulwark of their civil and political liberties, and watched with an unceasing jealousy and solicitude. The right constitutes one of the fundamental articles of Magna Carta * * *. When our more immediate ancestors removed to America, they brought this great privilege with them, as their birthright and inheritance * * *” (Commentaries on the Constitution of the United States II (4th Ed., Boston, 1873) pp. 540-541).

Based on this conviction, the colonists declared in their early American colonial charters that they were entitled

to all the rights and liberties of Englishmen.⁴ The later colonial constitutions expressly provided for the individual's right to trial by jury.

The early joint actions among the colonies expressed the same position. For example, in response to the methods of collecting the new duties and taxes levied on the colonies in 1765, the Stamp Act Congress promulgated a Declaration of Rights which contained the following provision:

"7th. That trial by jury is the inherent and invaluable right of *every British subject* in these colonies" (Sources of our Liberties (R. Perry, ed., 1959) (hereinafter "Perry") p. 270).⁵

Between the years 1776 and 1787, the states adopted principles in support of their own constitutions and bills of rights. Typical of the thinking underlying these principles is the provision in the Delaware Declaration of Rights: "That trial by jury of facts where they arise is one of the greatest securities of the lives, liberties and estates of the people" (Perry, p. 339) (see also Maryland and North Carolina declarations (*id.*, pp. 348-356)).

When the Constitution of the United States was being framed in Philadelphia, Congress, convening under the Articles of Confederation, enacted the Northwest Ordinance of 1787. The Northwest Ordinance contained the first

⁴See, e.g., Colonial Charter of Virginia in 1608 (1 Schwartz, The Bill of Rights: A Documentary History (1971) (hereinafter "Schwartz") p. 60).

⁵Especially abhorrent to the colonists was the provision extending jurisdiction to enforce the Stamp Act to the courts of admiralty, which operated without a jury (Perry, pp. 267-268). These same concerns were expressed in 1774 by the First Continental Congress (*id.*, p. 286), in 1775 by the Second Continental Congress (*id.*, p. 296 and in 1776 in the Declaration of Independence (*id.*, p. 320).

Federal Bill of Rights in America (Perry, p. 387). Article II provided:

"The *inhabitants* of the said territory shall always be entitled to the benefits of * * * trial by jury" (Perry, p. 395).

When the question of ratifying the Constitution was considered in the state ratifying conventions from 1787 to 1789, the delegates demanded that the Constitution guarantee the right of the citizen to trial by jury in civil cases.* Luther Martin of Maryland, for example, urged that the right to trial by jury:

"is most essential for our liberty to have it sacredly guarded and preserved; in every case, whether civil or criminal, *between government and its officers on the one part, and the subject or citizen on the other*" (Elliot, Debates on the Federal Constitution Vol. I, (2d Ed. 1907) p. 381).⁷

In framing the Seventh Amendment, the First Congress adopted the recommendations of the state ratifying conventions. In June 1789, James Madison submitted a draft of the bill of Rights to the First Congress. It included the provision which eventually became the Seventh Amendment:

"In suits at common law, *between man and man*, the trial by jury, as one of the best securities to the

*During the Constitutional Convention at Philadelphia in 1787, the issue of jury trials in civil cases was mentioned only in passing (see Henderson, The Background of the Seventh Amendment (1966) 80 Harv.L.Rev. 289, 292; *Colgrove v. Battin* (1973) 413 U.S. 149, 153-155, n. 8).

⁷See, also, 2 Schwartz, p. 713 (Massachusetts), p. 761 (New Hampshire), pp. 840-841 (Virginia), pp. 913-914 (New York), p. 967 (North Carolina); see also Documents Illustrative of the Formulation of the Union of the American States (1927) H.Doc.No. 398, 69th Cong., 1st Sess., p. 1054 (Rhode Island).

rights of the people, ought to remain inviolate" (2 Schwartz, p. 1028).

In his speech introducing the proposed amendments to Congress, Madison hailed the right to trial by jury as "essential to secure the liberty of the people * * *" (2 Schwartz, p. 1029).

The House thereafter appointed a select committee, comprising one member of each of the then-represented states (2 Schwartz, pp. 1050, 1054, 1057-1061). It was in that committee that the language "between man and man" was deleted (*id.* at 1117). On that point, the leading authority on the history of the Bill of Rights, Professor Bernard Schwartz, stated:

"It is fair to say that the Committee version [of the Bill of Rights] made no substantial alteration in the original Madison draft. * * * [T]he Committee version was a virtual restatement of the amendments proposed by Madison" (2 Schwartz, p. 1050).⁸

Nowhere in these texts or in the history leading up to the adoption of the Seventh Amendment is there any expression of the thought or intention of protecting the government. The reason is obvious: The Framers' sole concern was to protect citizens *against* government oppression; they had no thought of bringing government entities within that sphere of protection.

⁸If any significance should be attached to the deletion of the language "between man and man," the most reasonable explanation is that the Framers intended to insure the right of the people to trial by jury in suits commenced by the government.

The final text of the Seventh Amendment added the \$20 limitation and the clause limiting re-examination of facts tried by a jury (2 Schwartz, pp. 1146-1147).

This interpretation of the Seventh Amendment is also compelled by the repeated pronouncements of this Court that the Seventh Amendment was intended to protect the individual (see *Jacob v. New York* (1942) 315 U.S. 752, 753; *Parsons v. Bedford* (1830) 28 U.S. (3 Pet.) 433, 446; *Parsons v. Armor* (1830) 28 U.S. (3 Pet.) 413, 425; *Bank of Columbia v. Okely* (1819) 17 U.S. 235, 244).

This Court's interpretations of other provisions of the Bill of Rights further demonstrate that the Seventh Amendment was intended to apply only to individuals, not government entities.⁹ For example, in *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 323-324, the Supreme Court held that the Fifth Amendment does not extend to state governments.¹⁰ Similarly, the Court has described the Fourth Amendment protection against unreasonable searches and seizures as a fundamental right of the individual.¹¹ The same is true of the First Amendment¹² and the Sixth Amendment.¹³ Further, the Ninth Amendment expressly provides:

⁹See *Columbia Broadcasting System v. Democratic Committee* (1973) 412 U.S. 94, 162 (concurring opinion); *Lewis v. United States* (1966) 385 U.S. 206, 209.

¹⁰Likewise, government entities have no due process or equal protection rights under the Fourteenth Amendment (*Wisconsin v. Zimmerman* (W.D.Wis. 1962) 205 F.Supp. 673, 675; *United States v. Nebo Oil Company* (W.D. La. 1950) 90 F.Supp. 73, 95, affirmed (5 Cir. 1951) 190 F.2d 1003).

¹¹*Davis v. United States* (1946) 328 U.S. 582, 587.

¹²*Griswold v. Connecticut* (1965) 381 U.S. 479, 487 (Goldberg, J., concurring); *Gitlow v. New York* (1925) 268 U.S. 652, 666.

¹³*Duncan v. Louisiana* (1968) 391 U.S. 145, 155 ("right to jury trial is granted to criminal defendants in order to prevent oppression by the Government"). Although the government and the court must approve a criminal defendant's waiver of jury trial (F.R.Crim. P. 23(a)), the requirement of obtaining the government's consent

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by *the people*" (U.S.Const., Amend. IX).

That the Seventh Amendment was intended to protect only the citizen and not the government has also been affirmed by lower Federal and state courts. As discussed above (p. 4), Judge McDowell concluded in *United States v. Griffin* (W.D.Va. 1926) 14 F.2d 326 that "the Seventh Amendment does not preserve a right in the government to trials by jury * * *" (14 F.2d at 327). Likewise, in an extended analysis of the history of the Seventh Amendment, the Supreme Court of New Hampshire held that a state had no constitutional right to trial by jury (*Wooster v. Plymouth* (1882) 62 N.H. 193).¹⁴

to waiver developed as a source of protection for the individual. As this Court stated in *Patton v. United States* (1930) 281 U.S. 276, 306, *overruled on other grounds*:

"[U]nder the rule of the common law the accused was not permitted to waive trial by jury, as generally he was not permitted to waive any right which was *intended for his protection*."

¹⁴Only two other courts to our knowledge have considered whether government entities have a right of jury trial under the Seventh Amendment: *United States v. New Mexico* (10 Cir. 1981) 642 F.2d 397 (State of New Mexico entitled to a jury trial) and *E.E.O.C. v. Corry Jamestown Corp.* (3 Cir. 1983) 719 F.2d 1219 (Equal Employment Opportunity Commission entitled to a jury trial). As the court of appeals below noted, in *United States v. New Mexico*, "the significance, if any, of the fact that a state [rather than a private party] was making a jury demand" went totally unnoticed by the Tenth Circuit panel (Appx. A, p. A-13). The Third Circuit's holding in *E.E.O.C. v. Corry Jamestown* was based on statute. The court's discussion of the Seventh Amendment was unnecessary to its decision and thus dicta.

The states assert that because the Seventh Amendment, as ultimately adopted, is not expressly limited to individuals, the “intentions of the colonists cannot be used to determine [its] application” (States Br., p. 16). This Court rejected a similar argument in *South Carolina v. Katzenbach* (1966) 383 U.S. 301. There, the Court held that a state is not protected by the Bill of Attainder Clause (Art. I, § 9, Cl. 3) even though that constitutional provision, like the Seventh Amendment, is neutrally worded. The Court concluded that only individuals were intended by the Framers to be protected from bills of attainder (id., p. 324).

Ignoring the intentions of the Framers, the court below sought to determine whether in England “actions brought by government entities were tried to juries in 1791” (Appx. A, p. A-13). Reasoning by analogy, the court of appeals noted that “the position of the states is analogous to that of the English crown” (id., p. A-15); that “the crown was entitled to jury trial on demand under the common law that existed in 1791” (id.); and therefore, “states enjoy a right to jury trial akin to that enjoyed by the English crown in 1791” (id., p. A-16).

But the practice in England in 1791 does not determine to whom the Seventh Amendment applies. The intent of the Framers does. Regardless whether reasoning by analogy to the common law of England is appropriate with respect to the “issue” test, it does not determine the parties to whom the Framers granted the protection of the Seventh Amendment. The question whether cases brought by the Crown of England were tried to juries in 1791 is irrelevant. The

Framers had no intention of protecting the government or preserving the rights of the Crown.¹⁵

Further, the court of appeals pointed to the fact that the states are suing in their proprietary and not their sovereign capacity. The court then incorrectly concluded that for this reason the states have the right to jury trial (Appx. A, p. A-21). Whether the states are suing in their proprietary or their sovereign capacity is immaterial: There is no indication that the Framers intended the Seventh Amendment to extend to government entities in either capacity.¹⁶

v

¹⁵This Court has ruled that the Seventh Amendment did not adopt, in total, the historic practice of England at common law (*Bank of Columbia v. Okely* (1819) 17 U.S. 235). Defendant argued in *Okely* that because the common law practice did not recognize the right to waive jury trial, waiver could not be recognized under the Seventh Amendment (id. at 239-240). The Supreme Court held that the Seventh Amendment departed from the common law practice, and that waiver of the individual's right to jury trial gave:

“full effect to the seventh amendment of the constitution [and] is not only deducible from the general intent, but from the express wording of the article referred to. Had the terms been, that ‘the trial by jury shall be preserved,’ it might have been contended, that they were imperative, and could not be dispensed with. But the words are, that the *right* of trial by jury shall be preserved, * * * and the benefit of it may, therefore, be relinquished” (id. at 244).

The Supreme Court in *Okely* emphasized that the right to jury trial, as with others derived from the Magna Carta, was one of the “principles of *private rights*” (id. at 241-242). See also *Parsons v. Armor* (1830) 28 U.S. 413, 425.

¹⁶That state, local and foreign governments are considered “persons” under section 4 of the Clayton Act (15 U.S.C. § 15(a)) with standing to bring suit under that statute does not mean that they are “persons” in the constitutional sense. The Supreme Court also dis-

The court of appeals also considered it significant that the states here are suing as *parens patriae* on behalf of their citizens (15 U.S.C. § 15 c). The court below concluded that because citizens would clearly have the right to jury trial on their individual claims, the right to jury trial should not be affected by the fact that a state is suing on their behalf (Appx. A, p. A-23). It is well settled, however, that the *parens patriae* statute “simply created a new procedural device” (*Illinois Brick Co. v. Illinois* (1977) 431 U.S. 720, 734, n. 14). The *parens patriae* statute does not grant the states or any other party a right to jury trial. If, as the court of appeals suggested, that result is “anomalous” (Appx. A, p. A-23), Congress is free to amend the statute.¹⁷

The States in the court below asserted that “[t]he right to have a community-based jury find the facts in a given case is a basic element of our democracy” (States’ Br., p. 31). These purported policy arguments, however, are irrelevant here. They are equally applicable to any judicial or administrative proceeding. The dispositive point is that the Framers of the Bill of Rights did not intend to secure to a government entity the right to trial by jury under the Seventh Amendment. Further, plaintiffs’ policy arguments are overstated. The Federal courts conduct fair trials and

posed of that contention completely in *South Carolina v. Katzenbach* (1966) 383 U.S. 301:

“The word ‘person’ in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union • • •” (*id.* at 323).

¹⁷Further, the Constitution authorizes Congress to enact legislation extending the right to jury trial to government entities (U.S. Const., Art. III, § 2, Cl. 2).

render basic justice without the use of a jury in numerous cases. The Seventh Amendment "was never intended to establish the jury as the exclusive mechanism for factfinding in civil cases" (*Atlas Roofing Co. v. Occupational Safety Comm'n.* (1977) 430 U.S. 442, 460).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Dated: October 22, 1984.

Respectfully submitted,

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(Appendices follow)

Appendix A

United States Court of Appeals

For the Ninth Circuit

No. 83-5517

D.C. No. MDL-150-WPG

Standard Oil Company of California, et al.,
Appellants,

vs.

Arizona, California, Florida, Oregon, and Washington,
Appellees.

[Filed July 24, 1984]

Appeal from the United States District Court
Central District of California

Hon. William P. Gray, Judge, Presiding

Argued and Submitted: October 7, 1983

OPINION

Before: SKOPIL and PREGERSON, Circuit Judges, and
MARQUEZ,* District Judge.

PREGERSON, Circuit Judge:

In this antitrust suit, five states allege that major oil companies have conspired to fix the prices of refined petroleum products. The issue to be resolved on this interlocutory appeal is whether the states are entitled to a jury trial

*Hon. Alfred C. Marquez, United States District Judge, District of Arizona, sitting by designation.

of legal claims.¹ The district court held that the states are entitled to a jury. We affirm.

I. FACTS

Arizona, California, Florida, Oregon, and Washington brought separate actions charging major oil companies with conspiring to fix prices of refined petroleum products. The states brought suit in their proprietary capacities, as class representatives, and as *parens patriae*. The actions were transferred to the Central District of California for coordinated pretrial proceedings under 28 U.S.C. § 1407 (1982).

The states demanded a jury trial of the legal issues in their antitrust actions. The oil companies moved to strike the jury demand, arguing that the Seventh Amendment does not guarantee the right of jury trial to a state government. The district court held that the states are entitled to a jury trial of legal issues and certified the issue for immediate appeal under 28 U.S.C. § 1292(b) (1982). Thirty-four states collaborated on an *amicus curiae* brief in support of the plaintiff states. The City of Long Beach, plaintiff in another lawsuit which is part of the multi-district proceedings, obtained leave to appear as *amicus curiae* to protect its own right to jury trial.²

¹We do not use the word "legal" as a shorthand expression for "questions of law," in contrast to "questions of fact." Questions of law are, of course, decided by a court, not a jury. We use the word "legal" as a shorthand expression for issues cognizable at law that are tried by a jury, in contrast to issues cognizable in equity or in admiralty that are tried by a court.

²The City of Long Beach has demanded a jury trial in its separate lawsuit against the oil companies for price-fixing of crude oil. The issue of a governmental entity's entitlement to jury trial was raised first in the Long Beach case, and the district court held that Long Beach was entitled to a jury. The district court refused to

The sole question presented on this appeal is whether states have the right to a jury trial of legal issues in anti-trust actions in federal court. To answer this question, we must determine whether states have the right to a jury trial under federal statute or the Seventh Amendment. See *Lehman v. Nakshian*, 453 U.S. 156, 165 n.13 (1981) (there is no general right to jury trial in federal courts; the right must derive from statute or the Seventh Amendment).

II. STANDARD OF REVIEW

Whether states are entitled to a jury trial of legal anti-trust issues in federal court is purely a question of law, requiring us to construe federal statutes and the Seventh Amendment. Therefore, the district court's determination is freely reviewable. *Hoptowit v. Ray*, 682 F.2d 1237, 1245 (9th Cir. 1982); *Burlington Northern, Inc. v. Weyerhaeuser Co.*, 719 F.2d 304, 307 (9th Cir. 1983).

Our review is guided by the axiom that the right of jury trial in civil cases is a basic, fundamental right, and that "any seeming curtailment of the right to jury trial should be scrutinized with the utmost care." *In re U.S. Financial*

certify the issue for immediate appeal. A year later, the oil companies moved to strike the jury demands in the gasoline marketing cases brought by Arizona, California, Oregon, Washington, and Florida. The district court at that time held that the plaintiff states were entitled to a jury and certified the issue for immediate appeal. The district court felt that the appeal in the states' case might disturb its earlier ruling in favor of Long Beach because this court possibly could hold that no governmental entity is entitled to a jury trial. The oil companies have elected not to distinguish Long Beach from the states and contend that neither a state nor a city has the right to a jury trial. Long Beach argues that even if the states are not entitled to a jury trial, the holding should not extend to nonsovereign political subdivisions.

Securities Litigation, 609 F.2d 411, 421 (9th Cir. 1979), cert. denied, 446 U.S. 929 (1980) (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)).

III. STATES' RIGHT TO JURY TRIAL UNDER FEDERAL ANTITRUST LAWS

The right to jury trial in civil cases may be provided by federal statute. Congress may provide for the right to jury trial in instances where the Seventh Amendment would not otherwise guarantee such a right. See, e.g., 28 U.S.C. § 1346(a)(1) (providing for jury trial against the United States in tax refund cases); 28 U.S.C. § 1873 (providing for jury trial in admiralty actions involving shipping on Great Lakes). Because we must, if at all possible, resolve cases on statutory grounds before reaching constitutional questions, see *Escambia County, Florida v. McMillan*, U.S., No. 82-1295 Slip Op. at 4 (March 29, 1984) (per curiam), we consider first whether Congress has expressly provided the right to jury trial under the antitrust laws.³ If so, the right clearly extends to states because it is well established that states are "persons" capable of bringing treble damage actions under the Sherman and Clayton Acts. See *Georgia v. Evans*, 316 U.S. 159, 162 (1942) ("We can perceive no reason for believing that Congress wanted to deprive a State, as purchaser of commodities shipped in interstate commerce, of the civil remedy of treble dam-

³See *Lorillard v. Pons*, 434 U.S. 575, 577 (1978) (Supreme Court found it unnecessary to reach Seventh Amendment issue because Court found jury trial provided implicitly in the statute). Cf. *Curtis v. Loether*, 415 U.S. 189, 192 (1974) (Court did not give "extended consideration" to difficult statutory interpretation questions because it was clear Seventh Amendment guaranteed jury trial in Title VIII cases).

ages which is available to other purchasers who suffer through violation of the [antitrust laws].").

As a "person" a state is entitled to the same treatment as an individual or corporation. *Cf. Pfizer, Inc. v. Government of India*, 434 U.S. 308, 318-19 (1978) (India could sue for treble damages "to same extent as any other person injured by an antitrust violation . . ."). Thus, if the antitrust laws secure the right to a jury trial, a state's right to a jury trial would be clear.*

Unfortunately, the question whether Congress intended to statutorily create a right to jury trial in antitrust actions independent of the Seventh Amendment is far from clear. As we discuss below, the antitrust statutes themselves are silent on the matter, their legislative history provides no positive evidence, and Supreme Court precedent is equivocal.

A. *Legislative History*

The Sherman and Clayton Acts⁵ are silent on the subject of jury trial. This silence, however, would not preclude a finding that the statutory scheme implicitly provides a

⁴See *Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, 478 F. Supp. 889, 901 (E.D. Pa. 1979) (footnote omitted), *rev'd on other grounds sub nom. In re Japanese Elec. Prod. Antitrust Litig.*, 631 F.2d 1069 (3d Cir. 1980):

Thus, if in enacting the antitrust laws Congress has granted the right to trial by jury . . . any such limitation on the scope of the Seventh Amendment would be irrelevant. But if the antitrust laws do not themselves guarantee trial by jury on demand, we would have to decide the constitutional issue.

⁵The Sherman Act is codified at 15 U.S.C. §§ 1-7 (1982). The Clayton Act is codified at 15 U.S.C. §§ 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22-27 and 44, and at 129 U.S.C. §§ 52 and 53 (1982).

right to jury trial independently of the Seventh Amendment. In a recent case, the Supreme Court found an implicit right to jury trial where the statute in question was silent on the subject. *Lorillard v. Pons*, 434 U.S. 575, 583 (1978).⁶ In *Lorillard*, the Court noted that Congress incorporated Fair Labor Standards Act (FLSA) (29 U.S.C. §§ 201-219) procedures into the Age Discrimination in Employment Act (ADEA) (29 U.S.C. §§ 621-634) knowing that the right to jury trial under the FLSA was well-established by the courts. The Court interpreted Congress' express incorporation of FLSA procedures as an indication of Congress' intent to guarantee a right to jury trial under the ADEA. *Lorillard*, 434 U.S. at 584-85.

A district court and a circuit court have conducted *Lorillard* examinations of the antitrust laws, seeking signs of an implicit right to jury trial. The district court found evidence in the legislative history "insufficient to allow an extension of the reasoning of *Lorillard* to the antitrust statutes." *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 478 F. Supp. 889, 902 (E.D. Pa. 1979). The Third Circuit reversed the district court on other grounds, but affirmed the district court's conclusion that there is no *Lorillard*-type implicit right of jury trial in the antitrust laws. *In re Japanese Electronic Products Antitrust Litigation*, 631 F.2d 1069, 1075-76 (3d Cir. 1980).

⁶We note that *Lorillard* is a departure from the Supreme Court's past practice of turning directly to the Seventh Amendment when a federal statute is silent on the subject of jury trial. See *Zenith Radio Corp. v. Matsushita Elec. Ind. Co.*, 478 F. Supp. at 903. For an example of the Supreme Court's relying on the Seventh Amendment in the face of statutory silence, see *Curtis v. Loether*, 415 U.S. 189, 192 (1974).

References in the legislative histories of the Sherman and Clayton Acts show that the enacting legislators assumed that treble damage claims would be tried to juries. But the basis for the assumption seems to be the Seventh Amendment, not any language or implicit guarantee in the statutes. The debates on the Sherman Act duly note that the Seventh Amendment would provide for jury trials in treble damage actions, *see* 21 Cong. Rec. 2643 (1890) (remarks of Senator Gray), *cited in In re Japanese Electronic Products Antitrust Litigation*, 631 F.2d at 1076. Similarly, in the legislative history of the Clayton Act, there are various remarks showing that Congressmen expected that the constitutional right to jury trial would apply in treble damage actions. For example, certain Congressmen were concerned that the Seventh Amendment would be violated by a provision making findings of fact in government-prosecuted suits conclusive in subsequent private actions. *See* 51 Cong. Rec. 9491 (1914) (remarks of Reps. Green and Scott) *quoted in Zenith Radio Corp.*, 478 F. Supp. at 903-04 n.23.

In short, the legislative history shows that Congress expected that a jury trial would be available in treble damage actions under the antitrust laws. The legislative history, however, does not show that Congress intended to guarantee jury trial by virtue of the antitrust laws themselves "where the Seventh Amendment would not." *In re Japanese Electronic Products Antitrust Litigation*, 631 F.2d at 1076.

B. Supreme Court Pronouncements

The Supreme Court has never determined the precise source of the right to jury trials in antitrust cases. Nonetheless, troublesome dicta in one line of cases does suggest that a right to jury trial is secured directly by the antitrust

laws. The problem started in *Fleitmann v. Welsbach Street Lighting Co.*, 240 U.S. 27, 29 (1916) (Holmes, J.), where the Court dismissed a treble damage action brought as a derivative suit because allowing the suit to proceed in equity would deprive the antitrust defendant of the right to jury trial. “[W]hen a penalty of triple damages is sought to be inflicted, the statute should not be read as attempting to authorize liability to be afforded otherwise than through the verdict of a jury in a court of common law. On the contrary, it plainly provides the latter remedy and it provides no other.” 240 U.S. at 29 (citation omitted).

At first reading, Justice Holmes' language in *Fleitmann* seems to be saying that the antitrust laws *provide* trial by jury in a court of common law and no other remedy. An equally plausible interpretation of the language, however, is that the antitrust laws do not violate the Seventh Amendment by authorizing trial without a jury where the constitution guarantees one.

Rather than a declaration that the right to jury trial in antitrust cases is statutorily based, the Court's dictum appears to be a statement that it does not read the antitrust laws as interfering in any way with the Seventh Amendment's protection of the right to jury trial of damage and penalty issues.

Jorde, *The Seventh Amendment Right to Jury Trial of Antitrust Issues*, 69 Cal. L. Rev. 1, 18 n.86 (1981). At best, Justice Holmes' language is equivocal on the source of the right to jury trial.

Later references to *Fleitmann* are also equivocal. Citing *Fleitmann*, the Court has observed, “[T]he right to trial by jury applies to treble damage suits under the antitrust

laws, and is, in fact, an essential part of the congressional plan for making competition rather than monopoly the rule of trade" *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 504 (1959). The quote in *Beacon Theatres* sounds as if the Court believes Congress intended to guarantee the right to jury trial under the antitrust laws. But even if the right of jury trial is essential to the congressional antimonopoly plan, *Beacon Theatres* does not directly hold that the right is created by statute as opposed to being derived from the constitution itself. The fact that jury trial is an essential part of Congress' enforcement plan does not rule out the idea that Congress assumed that a jury trial would be available under the constitution, and thus did not provide the right by statute.

Adding still more confusion, the Supreme Court has referred to *Fleitmann* as resting on the antitrust laws. "Although the [*Fleitmann*] decision had obvious Seventh Amendment overtones, its ultimate rationale was grounded in the antitrust laws." *Ross v. Bernhard*, 396 U.S. 531, 536 (1970) (footnote omitted). Although at first reading, *Ross v. Bernhard* sounds as if the Court is saying that *Fleitmann* interpreted the antitrust laws as providing for jury trial, there is another explanation. *Fleitmann's* rationale is grounded on the antitrust laws because the opinion construes them so as not to detract from an antitrust defendant's constitutional right to jury trial.

In short, despite occasional tantalizing language, we conclude that the Supreme Court has never resolved the issue whether the antitrust laws grant a right to jury trial independent of the Seventh Amendment. Based on our review

of the legislative history and Supreme Court precedent, we agree with the Third Circuit that no right to jury trial flows directly from the antitrust laws. See *In re Japanese Electronic Products Antitrust Litigation*, 631 F.2d at 1076-77. Congress and the Supreme Court, we believe, correctly assumed that the constitution would provide for jury trials in treble damage actions. Neither Congress nor the Court has ever faced the issue whether the antitrust laws alone provide for a jury trial. We therefore cannot hold that plaintiff states are entitled to a jury trial under the antitrust laws, and thus we must decide whether a right to jury trial is secured to the states by the Seventh Amendment.⁷

⁷Even if the right to jury trial is guaranteed directly by the antitrust laws, the parameters of that right would be the same as the right guaranteed by the Seventh Amendment. Congress' concern that certain provisions could deny a right to jury trial in situations where the Seventh Amendment would guarantee a jury is evident from the legislative history. See 51 Cong. Rec. 9491 (1914) (remarks of Reps. Green and Scott), quoted in *Zenith Radio Corp.*, 478 F. Supp. at 903-04 n.23. But there is no evidence whatsoever in the legislative history that Congress desired to provide for jury trial in cases outside the scope of the Seventh Amendment. Thus, any statutory right would be commensurate with, not greater than, the Seventh Amendment.

[E]ven if a statutory right to jury trial were to be inferred from the [antitrust laws'] meager legislative record, the only source of content for that right would appear to be the congressional references to the Seventh Amendment itself. Thus . . . the process of determining the scope of the statutory right to jury trial in antitrust cases would not differ from pure constitutional analysis. It is necessary, therefore, to decide the constitutional question.

Jorde, *The Seventh Amendment Right to Jury Trial of Antitrust Issues*, 69 Calif. L. Rev. 1, 19-20 (1981) (footnote omitted).

IV. STATES' RIGHT TO JURY TRIAL UNDER THE SEVENTH AMENDMENT

The Seventh Amendment to the United States Constitution provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of common law.

In another case that called upon us to interpret the Seventh Amendment, we observed, “[t]he surface simplicity of this provision is beguiling for the exact scope of its application was unclear even when it was first adopted.” *In re U.S. Financial Securities Litigation*, 609 F.2d 411, 421 (9th Cir. 1979), cert. denied, 446 U.S. 929 (1980). In the discussion that follows we must delve beneath the surface simplicity of the Seventh Amendment in order to ascertain whether the states are guaranteed the right to jury trial.

A. *States are Entitled to a Jury Trial by Historical Analogy.*

Courts have long held that the application of the Seventh Amendment is determined by reference to history. “In order to ascertain the scope and meaning of the Seventh Amendment, resort must be had to the appropriate rules of the common law established at the time of the adoption of that constitutional provision in 1791.” *Dimick v. Schiedt*, 293 U.S. 474, 476 (1935) (citations omitted). The “common law” referred to in the Seventh Amendment is not the common law of the colonies or states, but the common law of England. See *United States v. Wonson*, 28 F. Cas. 745,

750 (C.C.D. Mass. 1812) (Story, J.); *Baltimore & Carolina Line, Inc. v. Redman*, 295 U.S. 654, 657 (1935).

Use of an historical analysis does not mean that juries are available only in suits "which the common law recognized among its old and settled proceedings. . . ." *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. (3 Pet.) 433, 447 (1830). Rather, an historical analysis permits reasoning by analogy. There is a right to jury trial in suits analogous to those "in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered" *Id.* Thus, the first question to be addressed concerning the scope of the Seventh Amendment is whether the issue to be tried is analogous to a legal (as opposed to an equitable or admiralty) issue that would have been tried to a jury in England in 1791.

Characterizing the issue to be tried as legal or equitable is only a starting point. Even issues "legal" in nature were sometimes tried by the judge, not by the jury, at common law. See Jorde, *The Seventh Amendment Right to Jury Trial of Antitrust Issues*, 69 Calif. L. Rev. 1, 9 (1981). "Legal" issues relating to jurisdiction, venue, and forum nonconvenience, witness competency, and civil contempt were tried by a judge at common law. See 5 *Moore's Federal Practice* ¶ 38.38[4] at 339-40 (2d ed. 1982). An inquiry concerning the right to jury trial in legal actions in England in 1791 could also turn on matters such as sovereign immunity which are extraneous to the legal-equitable distinction. *Id.* Thus, two inquiries are required for a proper application of historical analysis: are the issues to be tried legal and, if so, are the issues the sort that would have been tried to a jury in England in 1791.

Here we must decide first whether the issues involved are legal in nature and second, if actions brought by government entities were tried to juries in 1791. As applied to this case, the first inquiry is easy. Antitrust suits for treble damages are clearly legal actions. See *In re Japanese Electronic Products Antitrust Litigation*, 631 F.2d 1069, 1079 (3d Cir. 1980) (antitrust suits for treble damages are plainly legal; remedy of compensatory and punitive damages traditionally associated with courts of law). Indeed, punitive damage awards such as the treble damages available under the antitrust laws were historically available only at common law, not in equity. See *Decorative Stone Co. v. Building Trades Council*, 23 F.2d 426, 427-28 (2d Cir.), cert. denied, 277 U.S. 594 (1928).

The second inquiry is harder. The only circuit court decision holding that a state is entitled to a jury trial seemingly reached only the first question of the two part inquiry. There, the court simply looked to the issue involved, determined it was a legal issue, but did not consider the significance, if any, of the fact that a state was making a jury demand. See *United States v. New Mexico*, 642 F.2d 397, 399-400 (10th Cir. 1981). In that case, the United States sued New Mexico because the state had assessed and collected an allegedly unauthorized tax against a private contractor, working for the United States, who ultimately passed the tax on to the federal government. New Mexico requested a jury trial, and the trial court denied the request. On appeal, the Tenth Circuit held that the suit was in effect an action for a tax refund and found that the taxpayer had an historical right to a jury trial.

in such an action.⁸ The court then concluded that the right to jury was reciprocal and the taxing entity, New Mexico, was entitled to a jury trial as well. The court reasoned that it was anomalous for the federal government to recognize the right to jury trial in a case where the United States was the taxing entity but not in a case where the United States was the taxpayer. Thus, the Tenth Circuit concluded that New Mexico was entitled to a jury trial based solely on the nature of the issues involved. The court did not discuss the problem underscored by the appellant oil companies here, i.e., whether there is some special historical problem when a state is the party demanding the jury.

There were, of course, no states in England in 1791. Therefore, we must reason by analogy. States in our federal system are in a legal position similar to that of the English sovereign. Like the English sovereign, states are sovereign entities and cannot be sued without consent.⁹ Having

⁸The oil companies correctly point out that the Tenth Circuit in *United States v. New Mexico* was wrong in at least one respect. The court looked at historical practice in England and early America and concluded there was an historical right to jury trial in tax refund cases. The United States Supreme Court in *Lehman v. Nakshian*, 453 U.S. 156, 161 n.8 (1981), in a footnote observes that there was great historical reluctance to provide for jury trials against the United States in tax refund cases. The Supreme Court says that Congress "broke with precedent" by establishing a statutory right to jury trial in tax refund cases in 1954, whereas the Tenth Circuit said that the 1954 jury trial provision was a "reaffirmation" of a historical right to jury trial in tax refund cases. 642 F.2d at 401. The Tenth Circuit appears to be wrong on this point.

⁹Somewhat inexplicably, the oil companies argue that the doctrine of sovereign immunity weighs against the states' right to jury trial here. We cannot see how sovereign immunity principles support the oil companies' argument. According to sovereign immu-

observed that the position of the states is analogous to that of the English crown, we also note that the crown was entitled to jury trial on demand under the common law that existed in 1791 in England. There are many cases, both before and after 1791, where the crown brought suit before a jury. The following are illustrative: *The King v. Cotton*, 145 Eng. Rep. 729 (1751) (dispute between the crown and a nobleman about who had priority as creditor of a bankrupt; reference to jury findings); *The King v. Marsh*, 145 Eng. Rep. 842 (1751) (pleading stage case mentioning limitations on what jury may decide); *The King v. Humphrey*, 148 Eng. Rep. 371 (1824) (jury decided whether wharfinger had valid lien on goods seized by the crown to satisfy a debt); *Rex v. Peto*, 148 Eng. Rep. 577 (1826) (dispute over whether a custom house was built to crown's specifications—list; findings of jury).

In fact, trial by jury was originally a royal, as opposed to a popular right.

At common law, the jury was developed not merely as a protection for the individual, but also by the monarchs for their use. Indeed, after the Norman Conquest juries were "the prerogative rights of the Frankish kings." 1 F. Pollack & F. Maitland, *The History of English law*, 140 (2d ed. 1898 reprinted 1952). The jury "triumphed in this country [England] over the natural disinclination of Englishmen to admit

nity principles, individuals are not entitled to sue governmental entities unless the entity consents. Frequently, the governmental entity consents to suit, but only on the condition that the private litigate forego a jury trial. Thus, by virtue of the doctrine of sovereign immunity, individuals may not be entitled to jury trials against the government. Just because individuals may not be entitled to jury trials against the government, it does not follow that the government is not entitled to jury trials against individuals.

that this ‘palladium of our liberties’ is in its origin not English but Frankish, not popular but royal.” *Id.* at 141-41.

E.E.O.C. v. Corry Jamestown Corp., 719 F.2d 1219, 1224 (3d Cir. 1983).

In sum, applying the two-stage historical analysis to determine the scope of the Seventh Amendment, we find that the issues to be tried are legal and are the type that would have been tried to a jury in 1791. Moreover, we conclude that states enjoy a right to jury trial akin to that enjoyed by the English crown in 1791.

B. *The Seventh Amendment’s Scope Is Not Limited to Individuals.*

The appellant oil companies argue next that the Seventh Amendment was only intended to preserve the jury trial right as it existed in 1791 for individuals, and not for governments. At the outset, we note that the appellants’ argument finds no support in the neutral language of the Seventh Amendment, which says that “in suits at common law . . . the right of trial by jury shall be preserved. . . .” “By its terms, the [Seventh] [A]mendment is not restricted to citizens, but preserves the right for those who enjoyed it previously.” *E.E.O.C. v. Corry Jamestown Corp.*, 719 F.2d 1219, 1224 (3d Cir. 1983) (holding that the EEOC is entitled to jury trial when it brings suit on behalf of an individual employee for violations under the Age Discrimination in Employment Act).

Other provisions of the Bill of Rights, not as neutrally worded as the Seventh Amendment, have been interpreted to protect individuals and governments alike. The best

example of this is the Sixth Amendment. Although the Sixth Amendment expressly provides the right to jury trial only for the "accused," the Supreme Court has held that the government has the right to insist on a jury trial once the accused has waived the right. *Singer v. United States*, 380 U.S. 24, 36 (1965) (the government has a legitimate interest in seeing cases in which it believes conviction is warranted tried before the tribunal which the Constitution regards as most likely to produce a fair result).

Another example of a less-neutrally worded Bill of Rights provision held to protect state governments is the Fifth Amendment. It provides "nor shall any *person* . . . be deprived of life, liberty, or property, without due process of law; nor shall *private property* be taken for public use, without just compensation." (Emphasis added.) Despite the fact that the Fifth Amendment seems to protect only individuals, as it is worded in terms of "person" and "private property," this court has held that the United States had to pay just compensation to California for taking underwater lands to expand the San Francisco Naval Shipyard. *See California v. United States*, 395 F.2d 261, 263 (9th Cir. 1968).

Undeterred by the Seventh Amendment's neutral wording, the appellants delve exhaustively into both the sparse legislative history and the subsequent judicial interpretations of the Seventh Amendment in an effort to prove that it applies only to protect individuals from government curtailment of the right to jury trial, not to preserve such a right in government entities. First, the appellant oil companies refer to a number of state constitutions much less neutrally-worded than the Seventh Amendment, to support

the notion that only individuals were meant to have the right to trial by jury. For example, The Delaware Declaration of Rights, passed in 1776, contained the following provision: "That trial by jury of facts where they arise is one of the greatest securities of the lives, liberties and estates of the people." *Sources of Our Liberties* 339 (R. Perry, J. Cooper ed. 1959) (emphasis added).

The wording of state constitutions is of little value in interpreting the scope of the Seventh Amendment, however, because states' practices regarding jury trial varied widely. In fact, the degree of variance between states at the time the Bill of Rights was passed accounted in large part for the neutral, and somewhat ambiguous, language of the Seventh Amendment.

Thus, it was agreed that, with no federal practice to draw on and since state practices varied so widely, any compromising language would necessarily have to be general. As a result, although the Seventh Amendment achieved the primary goal of jury trial adherents to incorporate an explicit constitutional protection of the right of trial by jury in civil cases, the right was limited in general words to "suits at common law." (Footnote omitted.)

Colgrove v. Battin, 413 U.S. 149, 154-55 (1973).

Second, the appellant oil companies rely on highly rhetorical suggestions for improvements to the federal constitution made by ratifying states. These suggestions speak of the right to jury trial as a right of individuals. For example, Pennsylvania ratified the Constitution but recommended that the First Congress amend the constitution to guarantee variety of individual rights, including the right to jury trial. The Pennsylvania antifederalists believed

the proposed amendment was necessary to "preserve[] in the hands of the people, that share which they ought to have in the administration of justice." (Quoted in Wolfram, *The Constitutional History of the Seventh Amendment*, 57 Minn. L. Rev. 639, 695-96 (1973)).

Also quoted by appellants are selected statements from the framers themselves indicating that the major concern behind the Seventh Amendment was protecting the right of individuals to jury trial. For example, in his speech introducing the proposed amendment to Congress, James Madison referred to the right to trial by jury as "essential to secure the liberty of the people. . ." 2 B. Schwartz, *The Bill of Rights: A Documentary History* 1029 (1971).

This rhetoric is unpersuasive. There is no evidence that these statements were prompted by the notion that to protect the right of individuals to a jury trial, states must be excluded from the Amendment's coverage. Rather, these statements were sparked by concern over the broad powers of the federal government under the new constitution.

Third, the appellants point out the interesting fact that an early draft of the Seventh Amendment was much less neutral, guaranteeing a right to a jury trial in controversies "between man and man."¹⁰ Both sides claim that

¹⁰The very first proposal for a constitutional guarantee of the right to jury trial was introduced at the Philadelphia Constitutional Convention of 1787 by Charles Pinckey of South Carolina and Elbridge Gerry of Massachusetts. It was neutrally worded: "And a trial by jury shall be preserved as usual in civil cases." (Quoted in Wolfram, *The Constitutional History of the Seventh Amendment*, 57 Minn. L. Rev. 639, 660 (1973)).

The Constitutional Convention failed to enact a bill of rights, and the lack of individual rights guarantees was nearly fatal to

this earlier draft supports their position. The states and amici argue that the elimination of the "between man and man" language was a conscious attempt on the part of the drafters to make the Seventh Amendment neutral, or even to affirmatively protect the right of governments to a jury trial. The appellants argue that the "between man and man" language indicates that the drafters never intended to protect government entities. They also argue that the change away from the "between man and man" language was meant to secure an individual's right to a jury trial against a government entity. We accept the view of the only authority cited by either party on the effect of the "between man and man" language. The commentator attaches no importance to the seemingly drastic change from "between man and man" to wording totally neutral on the nature of the parties protected by the Seventh Amendment. *See* 2 B. Schwartz, *The Bill of Rights, a Documentary History* 1050 (1971) ("It is fair to say that the Committee version [of the Bill of Rights] made no substantial alteration in the original Madison draft."). *See also* Wolfram, 57 Minn. L. Rev. at 728-29.

Finally, the appellants cite from many court cases expounding on the nature of the Bill of Rights and the Seventh Amendment in particular. All quotes are vari-

ratification. When the First Congress met, the addition of a bill of rights was a high priority. James Madison's proposed amendment presented to Congress on June 8, 1789 contained the "between man and man" language. The phrase was taken from the declaration of rights adopted by the Virginia ratification convention. *See* Wolfram at 728 n.258. Madison's proposal was referred to a select committee, whose members revised Madison's draft to read "In suits at common law, the right of trial by jury shall be preserved." The House acting as a committee of the whole adopted the select committee's revision without debate. *See* Wolfram at 729.

ations upon the theme that the Bill of Rights was designed to protect individuals. *E.g., Lewis v. United States*, 385 U.S. 206, 209 (1966) ("The various protections of the Bill of Rights, of course, provide checks . . . for the protection of the individual."). These pronouncements were not made in situations where courts were considering the rights of state governments, and we find them unpersuasive. Moreover, as we explain below, an additional ground for our holding is that by protecting the states' right to jury trial here, we are also protecting the rights of their individual citizens.

In sum, we find that the sparse legislative history of the Seventh Amendment does not demonstrate that the framers of the Constitution intended it to limit the right of jury trial to individuals only.

V. THE STATES' DUAL ROLE IN THIS LITIGATION SUPPORTS THEIR RIGHT TO JURY TRIAL

The premise underlying appellant oil companies' argument against the states' right to a jury trial is that the states are sovereigns, capable of protecting their own interests, and undeserving of protections afforded by the Bill of Rights, including the right to jury trial. But in this litigation, the states are suing in their proprietary, not sovereign, capacities, just as an injured individual or corporation would sue. In *Georgia v. Evans*, 316 U.S. 159, 162 (1942), the Supreme Court compared the states to ordinary individuals who suffer from violations of the antitrust laws. ("We can perceive no reason for believing that Congress wanted to deprive a State . . . of the civil remedy of treble damages which is available to other purchasers. . . ."). See also *Pfizer, Inc. v. Government of*

India, 434 U.S. 308, 318-19 (1978) (foreign government could sue for antitrust violation to same extent as any other person).

Moreover, the states are also suing as *parens patriae* on behalf of all their citizens, who would have a right to a jury trial if suing individually. 15 U.S.C. § 15(c) (1982). In analogous situations, the Supreme Court has held that the right to jury trial on underlying claims is unaffected by the fact that suit is brought by someone acting in a representative capacity. For example, in *Ross v. Bernhard*, 396 U.S. 531 (1970), the Supreme Court held that the representative shareholder in a derivative action is entitled to a jury trial if the corporation would have had the right to a jury trial had it brought suit on its own.

The claim pressed by the stockholder against directors or third parties "is not his own but the corporation's . . ." The heart of the action is the corporate claim. If it presents a legal issue, one entitling the corporation to a jury trial under the Seventh Amendment, the right to a jury trial is not forfeited merely because the stockholder's right to sue must first be adjudicated as an equitable issue triable to the court.

Ross, 396 U.S. at 538-39 (citations omitted).

Similarly, in *E.E.O.C. v. Corry Jamestown Corp.*, 719 F.2d 1219, 1225 (3d Cir. 1983), the Third Circuit held that when the Equal Employment Opportunity Commission brings suit on behalf of a victim of age discrimination, the Commission is entitled to a jury trial. The Court explained that it would be inequitable and anomalous to hold that an individual otherwise entitled to a jury trial

is deprived of that right because the Commission chooses to bring suit on his behalf.

Therefore, if we were to adopt Corry Jamestown's interpretation of the governing statutory provisions, the Commission's decision to sue on an individual's behalf, rather than enuring to that individual's benefit, as Congress intended, would serve to deny the right to have the claim heard by a jury of one's peers. In order to avoid this inequitable and anomalous result, since the Commission is suing as a surrogate or in a representative capacity, the Commission must have the same rights that are possessed by the individual.

719 F.2d at 1225.

Here it would similarly be anomalous to deny the states a right to jury trial. Individual citizens would clearly have the right to jury trial on their individual claims, and the right to jury trial should not be affected by the fact that a state is suing on their behalf. Affording the states a jury trial essentially recognizes their citizens' rights to a jury trial on antitrust claims that may not be significant enough to be litigated individually, but that are of enormous collective importance.

Thus, the appellants' argument that the states are sovereign¹¹ and not entitled to a jury trial necessarily fails

¹¹The states correctly point out that although they may be considered sovereigns in their own court system, they are not sovereign when suing in the federal courts. They do not control the court system or enjoy special powers. It should also be pointed out that cities are not sovereigns even in the state court system, and thus Long Beach is in a better position than the states to argue that it has the right to a jury trial. "Cities are not themselves sovereign; they do not receive all the federal deference of the states that create them." *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 412-13 (1978) (citations omitted).

again because the states are suing in their proprietary capacities and as representatives of their citizens, who are clearly constitutionally entitled to a jury trial.

VI. CONCLUSION

Modern juries have a dual purpose, "in criminal cases to prevent government oppression . . . and in criminal and civil cases, to assure a fair and equitable resolution of factual issues. . . ." *Colgrove v. Battin*, 413 U.S. 149, 157 (1973) (citations omitted). The second function, the assurance of a fair and impartial resolution of factual questions, is at stake whether it is a state government or a private individual that desires a jury. See *E.E.O.C. v. Corey Jamestown Corp.*, 719 F.2d at 1224. As the Supreme Court has recognized, "[w]ith, perhaps, some exceptions, trial by jury has always been, and still is, generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases at law as well as in criminal cases." *Dimick v. Schiedt*, 293 U.S. 474, 485-86 (1934). We conclude that the states and the citizens they represent should not be deprived of the "normal and preferable mode" of resolving their antitrust claims against the appellants.

AFFIRMED.

Appendix B

United States District Court for the
Central District of California

MDL Docket No. 150 WPG
All State Cases

In Re: Coordinated Pretrial
Proceedings In Petroleum Products
Antitrust Litigation
[Filed Oct. 28, 1982]

Order Denying Motion To Strike
Plaintiff States' Demands For Jury
Trial, And Certification Pursuant To
28 U.S.C. § 1292(b)

This Court, having heard and considered written and oral argument of counsel, it is hereby ordered that defendants' motion to strike plaintiff States' demands for jury trial is denied.

This Court is of the opinion that said order involves a controlling question of law as to which there is a substantial ground for difference of opinion, and that an immediate appeal from the order pursuant to section 28 U.S.C. § 1292(b) may materially advance the ultimate determination of this litigation. Defendants have seriously challenged whether the States have a right under the Seventh Amendment or any Federal statute to demand a jury trial and I believe that it would be in the interest of justice for the appellate courts to rule definitively, and as soon as practicable, on this question. The resolution of this issue would have a very significant effect on the further conduct of this

case. There will be a vast difference between trial of these cases to a jury compared with trial to the court. If there is to be no jury, that should be determined before the trial.

Dated: October 27, 1982.

/s/William P. Gray

WILLIAM P. GRAY
United States District Judge

Appendix C

Atlantic Richfield Company

ABE Beverage, Inc.
Agro Internacional, S. de R.L. de C.V.
Almeg Extrusion Company, Inc.
Alpart Farms (Jamaica), Ltd.
Alumina Contractors Ltd.
Alumina Partners of Jamaica
Alyeska Pipeline Service Company
Ambler Mining Company
Anaconda Exploration New Zealand Limited
Anaflex, S.A. de C.V.
Anamax Mining Company
Anamet, S.A. de C.V.
ARCO Australia Coal Pty. Ltd.
ARCO Chemical IBERICA, S.A.
ARCO Oil Limited
ARCO Solar Nigeria Ltd.
Arilan, S.A. de C.V.
Arpet Petroleum Limited
Atlantic Richfield Oil Limited
Atlantic Richfield de Mexico, S.A. de C.V.
Aughinish Alumina, Ltd.
Aughinish Estates Limited
Aughinish Finance, Limited
Aughinish Property (Nominees) Limited
Badger Pipeline Company
Bingham Development Company
Black Lake Pipe Line Company
Blair Athol Coal Pty., Limited
British American Metals Company, Limited

Candel International Limited
Caribou—Chaleur Bay Mines Ltd.
Caribou—Smith Mines Ltd.
Centroamericana de Cobre, S.A.
Chile Copper Company
Cobre de Hercules, S.A.
Cobre de Mexico, S.A.
Cobrecel, S.A. de C.V.
Colonial Pipeline Company
Compania Minera Dos Republicas, S.A. de C.V.
Compania Minera Kappa, S.A.
Compania Minera Penacobre, S.A.
Compania de Petroleo Ganso Azul, Ltda.
Cook Inlet Pipe Line Company
Cupro San Luis, S.A. de C.V.
Curragh Coal Sales Co. Pty. Ltd.

Delaware Bay Transportation Company
Dexter de Mexico, S.A.
Dixie Pipeline Company

East Texas Salt Water Disposal Co.
85819 Canada Limited

Eisenhower Mining Company
Empresa de Comercio Exterior Mexicano, S.A. de C.V.
Energy Transportation Systems, Inc.
Ericsson

Flower Street Limited

Gravity Adjustment, Inc.
Greater Pacific Limited
Griffith-Consumers Company

Hardy Oil Company

Imperial Eastman de Mexico, S.A.
Impulsora De Cobre, S.A. de C.V.
Industrias Nacobre, S.A. de C.V.
Industrias Tecnos, S.A. de C.V.
Iricon Agency Ltd.

Jamaica Alumina Security Company Ltd.

Kenai Pipe Line Company
Kronos, Computacion y Teleproceso, S.A. de C.V.
Kuparuk Transportation Capital Corporation
Kuparuk Transportation Company

Las Quintas Serenas Water Company
Lavan Petroleum Co.
Lingobronce, S.A.

Manufacturera Mexicana De Partes Para Automoviles,
S.A. de C.V.

Mayflower Mining Company
R. W. Miller (Holdings) Limited
Minera Anaconda Limitada
Montoro, Empresa Para La Industria Quimica

Nacional de Cobre, S.A.
New Bingham Mary Mining Company
Nihon Oxirane Company, Ltd.
Nordisk Mineselskab A/S

P. T. Arutmin Indonesia
Park City Ventures
Park Cummings Mining Company
Park Premier Mining Company
Participaciones Mexicanas, S.A. de C.V.
Platte Pipe Line Company
Prince Consolidated Mining Company
Productos Especiales Metalicos, S.A.

Richfield U.K. Petroleum, Limited
Rodman Inc.

Saudi Cable Company
Servicios Industriales Nacobre, S.A.
Sinclair (U.K.) Oil Company Limited (SIOC)
Sinclair Venezuelan Oil Company
Skaland Graftiverk A/S
Smoke House Copper Mining Company
Sociedad Anonima Marvin
Solar Energy Center
Solvamex, S.A. de C.V.
Stup & Costello, Inc.
SUMIARCO Company Limited
Swecomex, S.A.

Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company
Trans Mountain Oil Pipe Line Company
Tubos Flexibles, S.A.

Union de Credito Industrial Vallejo, S.A.
United Park City Mines Company

The Walworth Company
West Mayflower Mining Company
William Prym de Mexico, S.A.

Chevron Corporation

AMAX Inc.
American Overseas Petroleum Limited

P. T. Caltex Pacific Indonesia
Caltex Petroleum Corporation
Cetus Corporation
Chevron do Brasil Participacoes e Empreendimentos Ltda

Chevron Oil Company of Portugal
Compania de Niguel Colombiano, S.A.
Compania de Petroleo Chevron, S.A.
Crest Exploration Limited
Huntington Beach Company
Oil Insurance Limited
Refineria Petrolera de Guatemala—California, Inc.
UNC Resources, Inc.

Exxon Corporation

Abu Dhabi Company for Onshore Oil Operations
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Aditivos Orinoco, C. A.
Adria-Wien Pipeline Gesellschaft mit besohrankter Haftung
Aishin Sekiyu K. K.
Aktiebolaget Svensk Petroleumadministration
Alberta Products Pipe Line Ltd.
Al-Jubail Petrochemical Company
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Andian National Corporation, Limited
Arabian American Oil Company
Aramco Overseas Company
Aramco Services Company
A/S Futurum
A/S Hydrantanlaegget Kobenhavns Lufthaven, Kastrup
Asakawa Sekiyu K.K.
Asociacion Civil "Academy La Castellana"
Assistance Services S.A.
Atlas Supply Company

Atlas Supply Company of Canada Limited
Australian Synthetic Rubber Company Limited
Aviation Services Saudi Arabia Limited
Awaji Gas Nenryo Kebushiki Kaisha

Bangkok Aviation Fuel Services Limited
Banshu Ekika Gas K. K.
Bayerische Erdgasleitung G.m.b.H.
BSB Gewerkschaften Brigitta und Elwerath
 Betriebafuhrungsgesellschaft m.b.H.
Bel-Air Entreposage S. A.
BTAS, Inc.
Building Products of Canada Limited
Byron Creek Collieries Limited
Byron Creek Collieries (1983) Limited

Canada Wide Mines Ltd.
Carnduff Gas Limited
Castle Peak Power Company Limited
Champlain Oil Products Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Sekiyu Hanbai K.K.
Cia Refinadora Petrola Santo Domingo, Inc.
Colmant Cuvelier Dodge S.A.
Colmar Suriname Oil Company, Ltd.
Compagnie d'Etancheite Africaine en Cote d'Ivoire S. A.
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliaire du Petrole

DFTG Deutsche Flussigerdgas Terminal GmbH
Daihatsu Sekiyu K.K.
Daiichi Kouyu K. K.
Daitsu Sangyo K.K.
Delta Rope & Twine Limited

Depot Petrolier du Grosivaudan
Depots de Petrole Cotiers
Depots Petrolier de la Corse
Det Gronlandske Olieaktieselskab
Deudan-Holding GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited
Dixie Pipeline Company
Dodge de Mexico S.A. de C.V.
Drivmedelecentralen Aktiebolag
Dukhan Service Company
86129 Canada Ltd.

E S F Limited
Eagle Kenso K.K.
East Japan Oil Development Company, Limited
East Texas Salt Water Disposal Company
Eiko Sekiyu K.K.
Ejendomsaktieselskabet ef 12, juni 1964
Eiwerath Erdol und Erdgas AG
Emirates Oilfield Chemicals Company
Emori Sekiyu K.K.
Emsland-Erdolleitung G.m.b.H.
Erdgas-Verkaufs-Gesellschaft m.b.H.
Escuela Las Morochas, C. A.
Esso Chimie
Esso Energie G.I.E.
Esso Exploration and Production Angola Inc.
Esso Italiana S.p.A.
Esso Malaysia Berhad
Esso of Canada Limited
Esso Resources Canada Limited

Esso Societe Anonyme Francaise
Esso Standard Tunisie S. A.
European Gas & Electric Company
Exact Reisebyra A/S
Excess and Treaty Reinsurance Corporation
446259 Ontario Limited

FPE South Africa (Proprietary) Limited
F. T. Giken Kabushiki Kaisha
Federal Pacific Electric de Mexico S.A. de C.V.
Federal Pioneer Limited
Ferngas Nordbayern G.m.b.H.
Ferngas Salzgitter GmbH
Forenade Svenska Oljeimportorers AB
Forjan de Colombia, S. A.
Fuji Kogyo K.K.
Fuji Uuyu K. K.
Fukui Sekiyu K.K.

General Busaan K.K.
General Highway K.K.
General Petrochemical Industries Limited
General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.
General Shipping Co. Ltd.
General Unyu Kabushiki Kaisha
Geobutane—Lavera
Gewerkschaft Brigitta
Gewerkschaft Elwerath
Gewerkschaft Elwerath & Co. GmbH.
Gewerkschaft Erdol-Raffinerie Deurag-Nerag
Gilbarro do Brasil S. A.—Equipamentos
Goroku Sekiyu K.K.

Grande Ecaille Land Company, Inc.
Groupement Immobilier Petrolier
Groupement Petrolier Aviation
Groupement Petrolier du Finistere G.I.E.

Hankyu Ferry K.K.
Hannoversche Erdolleitung G.m.b.H.
Hanshin Kyowa Sekiyu K.K.
Hayakawa Sekiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroshima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokuyu Sekiyu K. K.
Houston Regional Monitoring Corporation
Hydranten-Betriebsgesellschaft
Hydrierwerke Poelitz Aktiengesellschaft

Imperial Oil Limited
Imperial Pipe Line Company, Limited, The
Inada Ekka Gas Kabushiki Kaisha
Industrias Reliance S.A. de C.V.
Intecom, Inc.
Interface Mechanisms Inc.
Internationale Gas Transport Maatschappij B.V.
Interprovincial Pipe Line (Alberta) Ltd.
Interprovincial Pipe Line Limited
Interprovincial Pipe Line (NW) Ltd.
Investment Promotion Enterprises Limited
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions, Limited

Japan Butyl Company Limited
Japan Coal Liquefaction Development Company, Ltd.
Jersey Nuclear-Avco Isotopes, Inc.

K.K. Aizu General
K.K. Daimaru
K.K. General Sekiyu Hanbaisho
K.K. Heian Sekiyu
K.K. Kanagawa Sekiyu Shokai
K.K. Kyoei Shoshe
K.K. Kyowa Sekiyu Service
K.K. Marugo Izumasa Shoten
K.K. Niimi Kirun
K.K. Nippatsu
K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Toko
K.K. Toresen
K.K. Uwano Sekiyu Shokai
K/S ejendomsseiskebet af 8, oktober 1965
K/S Hoje Taastrup Storcenter 11
K/S Statfjord Transport A/S & Co.
Kabushiki Kaisha Sankyo Plastics
Kai Tak Refuellers Company Limited
Kanto Kygnus Sekiyu Hambai K.K.
Karlsruhe-Stuttgart Rohrleitung Gesellschaft mbH
Kawasaki Kyguna Sekiyu Hambai Kabushiki Kaisha
Kawasaki Naiko Kabushiki Kaisha
Keihin Kygnus Kabushiki Kaisha
Keiyo Sekiyu Hanbai K.K.
Kenya Petroleum Refineries Limited
Kepco Mfg. Inc.
Kibo Sekiyu Hanbai K.K.

Kiinteisto Oy Myllynksllio
Kinwa Sekiyu K.K.
Kobe Port Service Kabushiki Kaisha
Kobe Standard Sekiyu K. K.
Kowa Sekiyu K.K.
Kowloon Electricity Supply Company Limited
Kygnus Ekka Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Sekiyu K. K.
Kyushu Eagle K.K.

LFL Investments, Inc.
La Compagnie Electrique Pioneer du Quebec, Inc.
Lakehead Pipe Line Company, Inc.
LEAG Aktiengesellschaft fur luzerisches Erdol
Les Dooks des Petroles d'Ambes
Les Restaurants Le Voyageur Inc.
Long Beach Oil Development Company

Magota Sekiyu K.K.
Magyar Amerikai Olajipari Reszvenytarsasag
Mainline Pipelines Limited
Makoto Sekiyu Kabushiki Kaisha
Maortgaz Ertekesito R. T.
Maple Leaf Petroleum Limited
Maquinas de Coser y Border Sigma, S. A.
Mars-Alcatel, S.A.
Marugo Gas K.K.
MEGAL FINCO
MEGAL GmbH
Meiji Sekiyu K.K.
MFSBIC Financial Corporation of Houston
Mikawa Bussan K.K.

Mittelrheinische Erdgas Transport Gesellschaft mit
beschränkter Haftung
Mongeau & Robert Cie Ltee
Montreal Pipe Line Limited/Les Pipe-Lines Montreal
Limitee
Moraine Properties Ltd.
95269 Canada Limited

Nakabayashi Sekiyu K.K.
Nansei Sekiyu Kabushiki Kaisha
Native Venture Capital Co. Ltd.
Near East Development Corporation
Neptune Bulk Terminals (Canada) Ltd.
Nichimo Kabushiki Kaisha
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nikko Sangyo K.K.
Nippon Unicar K.K.
Nisku Products Pipe Line Company Limited
Nissei Sekiyu Kabushiki Kaisha
Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Norddeutsche Mineraloelwerke Stettin G.m.b.H.
Norddeutsche Oelleitungs-gesellschaft m.b.H.
Nordrheinische Erdgas Transport Gesellschaft mit
beschränkter Haftung
Nord-West Oelleitung G.m.b.H.
Northward Developments Ltd.
Northwest Company, Limited
Nottingham Gas Limited
107580 Canada Inc.

Office Prive d'Assurances et de Courtages
Offshore Medical Support Limited

Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Service Company of Iran (Private Company)
Oil Transport Company (Saudi Arabia) Limited
Oldenburgische Erdol Gesellschaft m.b.H.
Osaka Propane Gas Hambai Kabushiki Kaisha
Osaka Sekiyu Gas Yuso K. K.

P. T. Stonvac Indonesia
Pars Investment Corporation
Peninsula Electric Power Company Limited
Petrole Assistance Lyon (S.A.R.L.)
Petrole Assistance Marseille (S.A.)
Petrole Assistance Orleans (S.A.R.L.)
Petrole Assistance Paris T.R. (SA)
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petroleum Tankship Company, Inc.
Petrosvibri S.A.
Pipeline Service
Pipe Line Service Company, Inc.
Pipeline Service Iran
Pipeline Service U.K.
Pipe Line Services, Inc.
Plantation Pipe Line Company
Polder-Seehafen-Harburg GmbH
Polyolefins Product Co. Pty. Ltd.
Portland Pipe Line Corporation
Potencia Industrial S.A.
Productos Lorain de Mexico S.A. de C.V.
Progas A/S

Qatar Petroleum Company Limited
Qualbank, Inc.

Raffinerie du Midi S.A.R.L.
Rainbow Pipe Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla, S.A.
Reliance Electric & Engineering Company de Mexico
S.A. de C.V.
Reliance Electric Limited
Reliance Electric Ltd.
Reliance Electric S.A. (Spain)
Renix Co. Ltd.
Renown Building Materials Limited
Rheingas Erdgasleitungs-Gesellschaft m.b.H.
Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.
Ruhrgas Aktiengesellschaft

S.A. du Pipeline a Produits Petroliers sur Territoire
Genevoia (SAPPRO)
S & M Pipeline Limited
S.O.P.—Societa Oleodotti Padani S. p. A.
Saitama Sekiyu Hanbai K.K.
Sakurajima Futo K.K.
Sanko Oil Kabushiki Kaisha
Sanwa Kasei Kogyo Kabushiki Kaisha
Sanyo Sekiyu K.K.
Saraco S. A.
Schubert KG
SEAG Aktiengesellschaft fur schweizerisches Erdol
Seibu Kygnus Sekiyu Hanbai Kabushiki Kaisha
Seismic Industries A/S
Senpoku Oil Service K.K.
SERAM Societa per Azioni
Servacar Ltd.
Shehtah Drilling Limited

Shimoka Skiyu Kabushiki Kaisha
Shimoyama Sekiyu K.K.
Shin-Nihon Yukagaku Kogyo K. K.
Shinohara Oil K. K.
Shizuoka Kanesho Hambai Kabushiki Kaisha
Smiley Gas Conservation Limited
Sociedad Anonima "Escuela Campo Alegre"
Sociedad de Inversiones de Aviacion
Sociedad Nacional de Oleoductos Ltda.
Societa per Azioni Raffineria Padana Olii Minerali—
SARPOM
Societe Anonyme de la Raffinerie des Antilles
Societe Anonyme des Hydrocarbures
Societe Anonyme "Produits Lubrifiants de Madagascar"—
PROLUMA S.A.
Societe Civile de Mustapha Algerie
Societe Civile de Participation pour la Destruction des
Dechets Industriels (SOCDI)
Societe Civile Immobiliere "Courcelles-Etoile"
Societe Civile Immobiliere de la Croix au Chene
Societe Civile Immobiliere du 195 Avenue de Neuilly
Societe Civile Immobiliere Khariesse
Societe Civile Immobiliere "Kleber-Etoile"
Societe Civile Immobilier "Les Casseaux-Bougainville"
Societe de la Raffinerie d'Alger
Societe de la Raffinerie de Lorraine
Societe de Manutention de Carburants Aviation
Societe de Manutention de Carburants Aviation
Dakar-Yoff, S. A.
Societe de Promotion et de Financement Touristique
(CARTHACO)
Societe d'Entrepousage de San-Pedro

Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe d'Exploitation & de Development d'Operations
Commerciales
Societe du Ceoutchouc Butyl (SOCABU)
Societe du Depot Petrolier d'Hauconcourt
Societe du Parkings du Square Boucicaut
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe Esso de Recherches et d'Exploitation Petrolières
Esso Rep
Societe "Geomines-Caon"
Societe Harvaise de Manutention de Produits Petroliers
Societe Hoteliere de la Petite Compagnie
Societe Immobiliere Paris-Niel
Societe Industrielle de Mecanique et d'Equipement
Petrolier S.I.M.E.P. (S.A.R.L.)
Societe Italiana per l'Oleodotto Transalpino S.p.A.
Societe Ivoirienne d'Operations Petrolières S.A.
Societe Malgache de Raffinage
Societe du Pipeline Sud-Europeen
Societe Reunionnaise d'Entreposage
Socony-Standard-Vacuum Oil Company
(Petroleum Maatschappij)
Southern Natural Gas Development Pty. Ltd.
Standard Kosan Kabushiki Kaisha
Standard Service K.K.
Statfjord Transport A/S
Stockage Geologique de Gas de Lavora
Suddeutsche Erdgas Transport Gesellschaft mit
beschränkter Haftung
Suntech Company, Ltd.

Supertex, Inc.
Svensk Petroleumslagring Tre Aktiebolag
Syncrude Canada Ltd.
Synergistics Chemicals Limited
305120 Alberta Ltd.
346877 Ontario Limited

TAR-Tankanlage Rumlang AG
TBN Tanklager-Betriebsgesellschaft Nurnberg mbH
Taihei Bussan K.K.
Taiko Sekiyu K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Taketsuru Yugyo K.K.
Tanaka Sekiyu Hanbai K.K.
Tankanlage A. G., Mellingen
Tanklager Altishausen A. G.
Tanklager Gesellschaft
Tanklager-Gesellschaft Tegel
Tanklager Lechelles I S.A.
Tanklager Taegersohen AG
Tecumseh Gas Storage Limited
THUMS Long Beach Company
Thyssengas G.m.b.H.
TIBA Speditions GmbH
Tos Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Company, Limited
Tokai General Sekiyu Hanbai K.K.
Toko Sekiyu K.K.
Toledo Scale Company de Mexico S.A. de C.V.
Toledo Werk GmbH
Tonen Energy International Corp.
Tonen Maintenance K.K.

Tonen Seikyuksgaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology K. K.
Towa Sekiyu K.K.
Toyoshina Film Company, Ltd.
Transalpine Finance Holdings S.A.
Transalpine Oelleitung in Oesterreich
Gesellschaft m.b.H.
Trans-Arabian Pipe Line Company
Transgaz Lavera
Tsurumaru Unyu K.K.
Turkish Petroleum Company, Limited
UBAG—Unterflurbetankungsanlage Flughafen Zurich
Ulupna Estates Limited
Van Salt Water Disposal Company
W.A.G. Pipeline Pty. Ltd.
W. H. Adam, Ltee, Ltd.
Wako Jushi Kabushiki Kaisha
Wako Kaesi Kabushiki Kaisha
Westdeutsche Erdolleitungs—G.m.b.H.
Westgas G.m.b.H.
Williamsport Properties Limited
Winnipeg Pipe Line Company Limited
Wohnungsbaugetellschaft, Steimbke-Rodewald G.m.b.H
Worex Distribution
Wrenford Insurance Company Ltd.
Yasaka Sekiyu, K.K.
Yellowstone Pipe Line Company
Yoshimi Gas Kabushiki Kaisha
Yusi Sekiyu K.K.
Yugan Kaisha Nishi Kobe Dosai Center

Gulf Oil Corporation

A/S Jargul
A/S Jargul and Co. K/S
AB Djurgardsberg
Adela Investment Company, S.A.
Allied-General Nuclear Services
Andogas S.A. (Switzerland)
Asia Polymer Corp.
Autobahn-Raststaette Wuerenlos AG
China Gulf Oil Company Limited
Chinhae Chemical Company, Ltd.
Colonial Pipeline Company
Delaware Bay Transportation Company
Det Gronlandske Olieaktieselskab
Dixie Pipeline Company
Emery Joint Venture
Ethyleen Pijpleiding Maatschappij (Belgium) S.A.
Ethyleen Pijpleiding Maatschappij (Nederland) B.V.
Explorer Pipeline Company
Forenade Svenska Oljeimportorers AB
Gulf Canada Limited
Gulf Oil Canada Limited Associated Companies
Gulf Oil Corporation Erisa
Gulf Oil Terminals (Ireland) Limited
Gulf Oil Zaire S.A.R.L.
Harshaw-Byree & Co. Pty. Ltd.
Harshaw-Juarez S.A. de C.V.
Harshaw-Murata Kabushiki Kaisha
Harshaw Galvanotecnia S.A.
Harshaw Quimica Ltda.
Hochtemperatur Reaktorbau GmbH

Insco Holding & Finance Company N.V.

Keydril (Nigeria) Limited

Kuwait Oil Company Limited

Laurel Pipe Line Company

Mainline Pipelines Limited

Mid-Valley Pipeline Company

Midwest Carbide Corporation

North River Energy Company

Oil Shippers Service, Inc.

Oklahoma Nitrogen Company

Paloma Pipe Line Company

Pembroke Capital Company

Pembroke Cracking Company

Petrosil Oil Company Limited

Plastigama, S.A.

Plastijal Sociedad Anonima

Platte Pipeline Company

Pol Transport AB

Pyropower Corporation

Raffinerie De Cressier S.A.

Rio Blanco Oil Shale Partnership

Sarni S.P.A.-Refining

Solvent Refined Coal International, Inc.

Solvo Finanzierungs-Und Beteiligungs AG

Sunrise International Company Limited

Svensk Petroleum Administration A.B.

Svensk Petroleum Largring Tre A.B.

Svenska Petroleum Forvalting A.B.

Taita Chemical Corporation

Valley Pines Associates
Venezuela Gulf Refining Company
West Texas Gulf Pipe Line Company
Standard Oil Company of California

Mobil Oil Corporation

AB Djurgardsberg
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Adria-Wien Pipeline Gesellschaft m.b.H.
AIMCO (ALPHA) Shipping Company
AIMCO (Blasbjerg) Limited
AIMCO (OMEGA) Shipping Company Ltd.
Aircraft Fuel Supply B.V.
Airtankdienst Koln
AK Che.nie GmbH
AK Chemie GmbH & Co. KG
Akauma Rekisei Kogyo Kabushiki Kaisha
Alexandroupolis Petroleum Installation S.A.
Allied Asphalt Limited
Alpa Alet Ve Dayanikli Tuketim Mamulleri Pazarlama A.S.
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Ammenn GmbH
Ankara Gas Satis Anonim Sirketi
Arabian American Oil Company
Arabian Energy Company Limited, The
Arabian International Maritime Company Limited
Arabian International Maritime Company
The Arabian Petroleum Supply Company (S.A.)
Arabian Shipping & Trading Company S.A.
Arabian Trading Company S.A.

Aral Aktiengesellschaft
A/S Fjellvegen
A/S Kongens Plass I
A/S Moretral
Ammenn GmbH
The Associated Octel Company Limited
Associated Octel Company (Plant) Limited
ATAS-Anadolu Tasfiyehanesi Anonim Sirketi
Atlas Saraha S.A.
Australian Synthetic Rubber Company Limited
Autobahn-Betriebe Gesellschaft m.b.H
Aviation Fuel Services Limited
Aygaz Anonim Sirketi
B.V. Beheersmaatschappij MOBEM
Basra Petroleum Company Limited
Bataan Refining Corporation
Bayerische Erdgasleitung GmbH
Bin Sulaiman Mobil Towers
Bayerische Mineral Industrie A.G.
Beer GmbH
Bear GmbH & Co.
Mineralol-Vertriebs-KG
Bostadsrattsforeningen Basunen, Malmo
Bostadsrattsforeningen Forarsatet, Orby
Bostadsrattsforeningen Silverskatten, Trelleborg
Bostadsrattsforeningen Skepparegarden, Norrkoping
Braa~~key~~ Investments (Proprietary) Limited
Brazos Heights Housing Incorporated
Brussels Airfuels Service S.C.
Buffalo River Improvement Corporation

Canners' Steam Company, Incorporated
Cansulex Limited
Canyon Reef Carriers, Inc.
Cartoenvases Valencia, S.A.
Carton de Colombia, S.A.
Carton de Venezuela, S.A.
Cartones Nacionales, S.A.
Celmisia Shipping Corporation
Celulosa y Papel de Columbia, S.A.
Central African Petroleum Refineries (Pvt) Limited
Central Kagaku Kabushiki Kaisha
Cercera S.A.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Nenryo Kabushiki Kaisha
Colombianos Distribuidores de Combustibles, S.A. (CODI)
Columbianos Forestadores, S.A.
Colonial Pipeline Company
Comet-Brennstoffdienst GmbH
Commercial Polymers Pty. Ltd.
Commodore Maritime Company, S.A.
Compagnie Africaine de Transport Cameroun
Compagnie D'Entreposage Communautaire
Compagnie Rhenane de Raffinage
Compagnie Senegalaise des Lubrifiants (C.S.L.)
Compania Colombiana de Empaques Bates, SSA
Compania Colombiana De Forestacion S.A.
Compania de Lubricants de Chile Limitada
(Copec-Mobil Ltda.)
Compania Mexicana de Especialidades Industriales,
S.A. de C.V.
Consortium Raymond Duez
Constructora Calle 70, S.A.

Cook Inlet Pipe Line Company
Corrugadora de Carton, S.A.
Cyprus Petroleum Refinery Limited

D. Muhlenbruch GmbH
D. Muhlenbruch GmbH & Co. KG
Dai Nippon Jushi K.K.
Dearborn Land Company
De. Ba. Industria Petrolifero
Depot Petrolier de Mourepiane
Depot Petrolier du Gresivaudan
Depot de Petrole Cotiers
Depots Petroliers de La Corse (DPLC)
Deutsche Pentosin-Werke GmbH
Deutsche Transalpine Oelleitung GmbH
Dicomi S.r.l.
Dixie Pipeline Company
Drivmedelscentralen AB
Dukhan Services Company

East Japan Oil Development Company Ltd.
Eastern Lease Company Ltd.
East Texas Salt Water Disposal Company
Emoleum (Asphalts) Limited
Entrepot Petrolier de Chamberry
Enterpot Petrolier de Dijon
Enterpot Petrolier de Mulhouse (E.P.M.)
Enterpot Petrolier de Nancy
Entreprise Jean Lefebvre
Erdgas-Verkaufs-Gesellschaft mbH
Erdoel-Lagergesellschaft mbH
Erdoel-Raffinerie Neustadt GmbH & Co. oHG
Erdoelbetrieb Reitbrook

Erdoelraffinerie Gesellschaft mbH in Liquidation
Establishments Bouthenet
Ets. Le Goff
Ets. R. Saillard

Faavang Autoverksted A/S
FACEL
Fairwind Maritime Company, S.A.
Felix Oil Company
Fibril, S.A.

Fibras Internacionales de Puerto Rico, Inc.
Filtroleo-Sociedade Portuguesa de Filtros Lda.
Filtros De Costa Rica S.A.
Finsbury Printing Limited
First Eastleigh No. 163 (Proprietary) Limited
Fountain Garage (East Park) Ltd.
Fountain Garage (Meadowhead) Ltd.
Fountain Garage (Mercury) Ltd.
Fountain Garage (Newbury Park) Ltd.
Fountain Garage (Stirchley) Ltd.
Frome-Broken Hill Company Proprietary Limited
Fruehmesser Mineraloelhandels GmbH & Co. KG
Fruehmesser GmbH
Fuso Operations Kabushiki Kaisha
Futuro Enterprises (Christchurch) Ltd.
Futuro Homes (N.Z.) Ltd.

Gaz Aletleri Anonim Sirketi
Geomines-Caen
Geovexin
Ghana Bunkering Services Limited
Goteborgs Branslesortering AB
Groupement Immobilier Petrolier G.I.P.

Groupement Petrolier Aviation G.P.A.

Groupement Petrolier De Brest (GPB)

Handelmaatschappij Hugenholtz & Co. B.V.

H. van der Heijden Service Stations B.V.

Heizoel-Handelsgesellschaft mbH

Hellas Gas Storage Company S.A.

Home Counties Petroleum Products Limited

Hormoz Petroleum Company

Hydranten-Betriebs-Gesellschaft, Flughafen Frankfurt

Inmunizadoras Unidas, S.A.

Industria De Carbon Del Valle Cauca, S.A.

Industria Interamericana De Filtros Ltda. (INTERFIL)

Iranian Oil Participants Limited

Iranian Oil Services (Holdings) Limited

Iranian Oil Services Limited

Iraq Petroleum Company, Limited

Iraq Petroleum Pensions Limited

Iraq Petroleum Transport Company Limited

Iside, S.p.A.

Istanbul Petrol ve Makine Yasglari Limited Sirketi

Japan Airport Fueling Service Co. Limited

Japan Solar Energy Co., Ltd.

J.E.C.O.P.

K.D. Keysers Investments (Proprietary) Limited

K.K. Sankyo Plastics

K.K. Toresen

Kanto Kyguns Sekiyu Hambai K.K.

Kanto Oil Pipeline Co., Ltd.

Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha

Keihin Kygnus Sekiyu Hambai Kabushiki Kaisha

Keiyo Sea-Berth Company, Limited
Kettleman North Dome Association
Klaus Koehn GmbH
Klaus Koehn GmbH & Co. Mineraloel KG
Kobe Port Service Kabushiki Kaisha
Kurt Ammenn GmbH & Co. K.G.
Kygnus Ekika Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Sekiyu Kabushiki Kaisha
Kyokyto Petroleum Overseas, Ltd.
Kyokuto Sekiyu Kogyo Kabushiki Kaisha

Les Supermarches De Cote D'Ivoire
Likit Petrol Gazi ve Yakit Ticaret A.S.
Lobe Chemie Gesellschaft mbB
Lubricantes del Sur, S.A.

Marceaux & Cie
Mateo Tankers (U.K.) Limited
Maury Manufacturing Company, Inc.
Mediterranean Refining Company
Meentzen & Franke GmbH & Co.
Mertl GmbH
Mobil Ami, S.A.
Mobil Atlas Sociedad Anonima de Capital Variable
Mobil Comercio, Industria e Servicios Ltda.
Mobil Gaz-Mobil Petrol Gazlari Anonim Sirketi
Mobil Korea Lube Oil Industries Inc.
Mobil Motor Rest AG
Mobil Nile Oil Company
Mobil Oil Gabon
Mobil Oil Ghana Limited
Mobil Oil Maroc
Mobil Oil Nigeria Limited

Mobil Oil Nord-Africaine
Mobil Oil Portuguesa, S.A.R.L.
Mobil Tunisie
Mosul Petroleum Company Limited
Motel Rest SA
Mt. Marrow Blue Metal Quarries Pty.
Ndola Oil Storage Company Limited
Near East Development Corporation
New Zealand Refining Company Limited, The
New Zealand Synthetic Fuels Corp. Ltd.
New Zealand Synthetic Fuels (Housing) Corporation
Limited
Nichimo Oil (Bermuda) Co., Ltd.
Nippon Unicar Company Limited
Norddeutsche Erdgas-Aufbereitungs GmbH
Nordic Storage Company Ltd.
Nottingham Gas Limited
N.V. Rotterdam-Rijn Pijpleiding Maatschappij
N.V. Socony-Standard-Vacuum Oil Company
Occidental de Empaques, Ltda.
Octel Associates
Octel S.A.
Oil Kol (Proprietary) Limited
Oil Service Company of Iran (Private Company)
Oldenburgische Erdoel Gesellschaft mit beschränkter
Haftung
Olympic Pipe Line Company
Osage Pipe Line Company
P.T. Arun Natural Gas Liquefaction Company
P.T. Berau Coal
P.T. Stanvac Indonesia

Paloma Pipe Line Company
Pars Investment Corporation
P-6—Group B.V.
Pembalta Gas System No. 1 Ltd.
Pembalta Gas System No. 3 Ltd.
Pembalta Gas System No. 4 Ltd.
Pembalta Gas System No. 5 Ltd.
Pembalta Gas System No. 6 Ltd.
Perretti Petroli S.p.A.
Petrocab
Petrogas Processing Ltd.
Petroleum Development (Cyprus) Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petroleum Tankship Company Inc.
Petromin Lubricating Oil Company
Petromin Lubricating Oil Refining Company
Petromin-Mobil Yanbu Refinery Company Ltd.
Pipe Line Benal de La Goulette
Plegadizos para La Industria S.A.
Poly Oil Chimie (P.O.C.)
Prespak (Proprietary) Limited
Qatar Petroleum Company Limited
Qualbank, Inc.
Rainbow Pipe Line Company
Randhurst Corporation
Reforestadora Andina, S.A.
Reforestadora del Cauca, S.A.
Rhodes Petroleum Installation S.A.
Rivers Court Estates, Limited
Rohel-Aufsuchungs Gesellschaft mbH
Ruhrgas Aktiengesellschaft

S&M Pipeline Limited
Samarco (Alpha) Shipping Company
Samarco (Beta) Shipping Company
Sanwa Kasei Kogyo Kabushiki Kaisha
Sarni S.p.A.
Saudi Arabian Maritime Company
Saudi Can Company, Ltd., The
Saudi Chemical Industries Company Limited
Saudi Maritime Company Ltd.
Saudi Tankers Limited
Saudi Yanbu Petrochemical Company
Schubert Kommanditgesellschaft
Segher de Mexico, S.A. de C.V.
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
SENERCO
Seram Societa per Azioni (S.p.A.)
Sierra Leone Petroleum Refining Company Limited, The
R. Simonnet & CIE
Sociedad Calle 67, Ltda.
Sociedade Portugal Marrocos SARL
Societa Italiana per l'Oleodotto Transalpino, S.p.A.
Societe Africaine de Raffinage
Societe Alfred Ott & Cie
Societe Belge de Transport par Pipeline S.A.
Societe Camerounaise des Depots Petroliers (S.C.D.P.)
Societe Camerounaise Equatoriale De Fabrication De
Lubrifiants "S.C.E.F.L."
Societe Civile de Mustapha/
Societe Civile Immobiliere Courcelles-Etoile
Societe Civile Immobiliere de Construction de 34 Avenue
du General Leclerc a Boissy-St-Leger
Societe Civile Immobiliere de Construction "La Residence
Brune"

Societe Civile Immobiliere du 10 Bd. de la Republique A
La Garenne-Colombes
Societe Civile Immobiliere Kleber-Etoile
Societe Civile Immobiliere La Fontaine Saint Lucien
Societe Civile Immobiliere Mobil
Societe Dahomeenne d'Entreposage de Produits Petroliers
Societe d'Armement Fluvial et Maritime "SOFLUMAR"
Societe de Construction & de Gestion CB 12
Societe de Distribution Castelroussine (SODICA)
Societe de Gaz D'Oceanic (SOGADOC)
Societe de Manutention de Carburants Aviation (S.M.C.A.)
Societe de Manutention de Carburants Aviation Dakar-Yoff
Societe de Manutention de Carburants Aviation de Tahiti
(SOMCAT)
Societe de Maperialx d'Etancheite Pour Le Entreprises
(Meple)
Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)
Societe d'Entreposage d'Hydrocarbures de Bingo (SEHBI)
Societe d'Entreposage de San Pedro (SESP)
Societe d'Entreposage Petrolier au Burundi
Societe d'Habitations a Loyer Modere de la Seine Maritime
Societe des Bitumes et Cut-Backs du Cameroun
Societe Des Huiles Lemahieu
Societe de Pipe-Line Sud-Europeen
Societe Francaise Stoner-Mudge
Societe Gabonaise d'Entreposage de Produits Petroliers
Societe Gabonaise de Raffinage
Societe Industrielle des Asphaltes et Petroles de Lattaquie
(Syrie) S.A.
Societe Jean Roussel S. A.
Societe Ivoirienne de Fabrication de Lubrifiants
(S.I.F.A.L.)

Societe Ivoiriene de Raffinage
Societe Mauritanienne d'Entreposage de Produits Petroliers
Societe Malienne D'Entreposage (SME)
Societe Nationale de Raffinage (Sonara)
Societe Pizo De Formulation De Lubrifiants (PIZOLUB)
Societe Tahitienne de Depots Petroliers
Societe Tchadienne D'Entreposage de Produits Fetroliers
Societe Togolaise d'Entreposage (STE)
Sonarep (South Africa) (Proprietary) Limited
SONEX
South African Oil Refinery (Proprietary) Limited
South Saskatchewan Pipe Line Company
South West Africa Road Binders (Proprietary) Limited
Statfjord Transport A.S.
Sydney Metropolitan Pipeline Pty. Ltd.
Syria Petroleum Company Limited

T.R. Miller Mill Company, Inc.
Tanklagergesellschaft Kohn-Bonn
Tecklenburg GmbH
Tecklenburg GmbH & Co. Energiebedarf K.G.
Texoma Pipe Line Company
Thailand Lubricant Products Limited
Thailand Solvent Products, Ltd.
Thums Long Beach Company
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Co., Ltd.
Tonen Energy International Corp.
Tonen Maintenance Kabushiki Kaisha
Tonen Sekiyu Kagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology Kabushiki Kaisha
Total Centrafricaine de Gestion (TOCAGES)

Toyoshina Film Co., Ltd.
Tradewind Maritime Co., S.A.
Transalpine Finance Holdings S.A.
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Trans-Arabian Pipe Line Company
Transgas Umschlags-Lager-Und Transport Gesellschaft
mbH
Turkish Petroleum Company Limited
Twifo Oil Plantations Ltd.
UBAG Unterflur Betankungsanlage Flughafen Zurich
Union Grafica, S.A.
United Kingdom Oil Pipelines Limited
W.A.G. Pipeline Pty. Ltd.
Wako Kasei Kabushiki Kaisha
Wakohjushi Kabushiki Kaisha
Walton, Gatwick Pipeline Company Limited
Werner Weidemann Mineraloelvertrieb G.m.b.H.
West Shore Pipe Line Company
Wilhelm Mertl GmbH & Co. KG
Wolverine Pipe Line Company
WSG, Warme Service GmbH
Wyeo Pipe Line Company
Wymondham Oil Storage Co., Limited
Zaire Mobil Oil
Zaire Services Des Entreprises Petrolieres

Shell Oil Company

Basin Pipe Line System
Bullenbay Marine Services, N.V.
Business Development Corporation of North Carolina
Butte Pipe Line Company

Capline System

Capwood Pipe Line System

Cortez Capital Corporation

Crown-Shell Baytown Feeder Line System

Curacao Oil Terminal N.V.

Dixie Pipeline Company

East Texas Salt Water Disposal Company

Explorer Pipeline Company

First Harlem Securities Corporation

Fractionation Research, Inc.

George Newman & Company

Gravecap, Inc.

Heat Transfer Research, Inc.

Inland Corporation

LOCAP, Inc.

LOOP, Inc.

MESBIC Financial Corporation of Houston

Oil Companies Institute for Marine Pollution

Compensation Limited

Oil Insurance Ltd.

Olympic Pipe Line Company

Ozark Pipe Line Company

Penn Central Corporation

Plantation Pipe Line Company

Rancho Pipe Line System

Royal Dutch Petroleum Company

Seadock, Inc.

Shell Petroleum, N.V.

The "Shell" Transport and Trading Company, Limited
Ship Shoal Pipe Line System

Thums Long Beach Company

United Scientific, Inc.

West Shore Pipe Line Company

WIDC

Wolverine Pipe Line Company

Texaco Inc.

Texaco Inc.

Refineria Texaco de Honduras, S.A.

Texaco Agro-Industrial (Nigeria) Limited

Quimica Industrial "FIDES" S.A.

Texaco Canada Inc.

Public Fuel Transmission Systems Limited

Great Eastern Oil & Import Co. Limited, The

Texaco Norway A/S

Deutsche Texaco Aktiengesellschaft

Texaco Portugal Prospeccaoe Producao, S.A.R.L.

Texaco North Sea Norway A/S

Texaco Gabon

Texaco Togo

Zaire-Texaco S.A.R.L.

Texaco Nigeria Limited

Texaco-Cities Service Pipe Line Company

Tadlaqaz S.A.

American Overseas Petroleum Limited

Bunkerservice Brunsbuttel G.m.b.H.

Societe Ivoirienne De Futs et D'Emballages (Sifembal)

(See Texaco Code D'Ivoire)

Societe Guineenne De Lubrifiants et D'Emballages
(SOGUILUBE) (See Texaco Africa Ltd.)
Caltex Petroleum Corporation
Australian Lubricanting Oil Refinery Limited
Phoenicia Oil Company S.A.L.
Botany Bay Tanker Company (Australia) Pty. Limited
Sydney Metropolitan Pipeline Pty. Limited
Koa Oil Company, Limited
Mediterranean Refining Company
Nippon Petroleum Refining Company, Ltd.
Tokyo Tanker Company, Limited
Caltex Deutschland G.m.b.H.
Caltex Mediterranean Limited
Condea Chemie G.m.b.H.
Federated Pipe Lines Ltd.
Flexibox G.m.b.H.
LPG de Panama, S.A.
Pembroke Capital Company Inc.
P.T. Caltex Pacific Indonesia
Petrogas, S.A.
Texaco Maroc
Societe Ivoirienne D'Avitaillements Portuaires (S.I.A.P.)
Societe Ivirienne D'Entrepasage De Produits Petroliers
(S.I.E.P.P.)
Badger Pipe Line Company
Bayonne Industries, Inc.
Canyon Reef Carriers, Inc.
Colonial Pipeline Company
Coltexo Corporation
Dixie Pipeline Company
Explorer Pipeline Company
Felix Oil Company

Kaw Pipe Line Company
Laurel Pipe Line Company
LOCAP, Inc.
LOOP Inc.
Olympic Pipe Line Company
Portland Pipe Line Corporation
Texas-New Mexico Pipe Line Company
THUMS Long Beach Company
West Shore Pipe Line Company
Wolverine Pipe Line Company
Wyco Pipe Line Company
Aircraft Fuel Supply B.V.
Airport Refueling Services S.p.A.
Aktiebolaget Svensk Petroleumslagring
Alberta Products Pipe Line Ltd.
Arabian American Oil Company
Associated Octel Company Limited, The
Aviation Fuel Services Ltd.
Boral Limited
New Zealand Refining Company Limited, The
South African Oil Refinery (Proprietary) Ltd.
Batangas Land Company Inc.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Ndola Oil Storage Company Limited
Central African Petroleum Refineries (Private) Ltd.
East African Oil Refineries Limited
H. C. Sleigh Limited
Pakistan Refinery Limited
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage (S.R.E.)
Cia. Refinadora Petrolera Santo Domingo Inc.
Deutsche Transalpine Oelleitung GmbH

Forenade Svenska Oljeimportorers AB
Frevlig A.G.
Gas Natural Colombiano S.A.
Ghana Bunkering Services Limited
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Irish Refining Company Limited
Maghreb Gas S.A.
Mainline Pipelines Limited
Miland Airport Refueling Services S.p.A. (MARS)
Mitsui-Texaco Chemicals Co., Ltd.
Montreal Pipe Line Company Limited
N.V. Rotterdam Rijn Pijpleiding Maatschappij
Oberheinische Mineralolwerke G.m.b.H.
Pars Investment Corporation
Pipelines of Puerto Rico, Inc., The
Raffinerie du Sud-Ouest S.A.
Refinery Services Company S.A.
Rheem del Ecuador C.A.
Rhein-Main Rohrleitungstransportgesellschaft m.b.H.
Saudi International Petroleum Carrier Ltd.
Sierra Leone Petroleum Refining Company Limited, The
Skandinaviska Raffinaderi Aktiebolaget Scanraff
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali
(SARPOM)
Societe Africaine de Raffinage S.A. (SAR)
Societe Anonyme de la Raffinerie des Antilles (SARA)
Societe D'Entreposage de Bobo-Dioulasso
Societe Camerounaise d'Entreposage (SCE)
Societe Dakaroise d'Entreposage S.A. (SDE)
Societe d'Entreposate de San Pedro S.A. (SESP)

Societe d'Entreposage Petrolier au Burundi S.A.R.L.
(SEP-BURUNDI)
Societe De Manutention Des Carburants Aviation
Dakar-Yoff (SMACADY)
Societe Gabonaise de Raffinage (SOGARA)
Societe Gabonaise d'Entreposage de Produits Petroliers
S.A. (SGEPP)
Societe Tchadienne d'Entreposage de Produits Petroliers
S.A. (STEPP)
Societe Togolaise d'Entreposage S.A. (STE)
Svensk Petroleum Forvaltning Aktiebolag
Tankanlage AG Ruemlang (TAR)
Texaco Mexicana, S.A.
Transalpine Finance Holdings S.A.
Transalpine Olleitung in Osterreich GmbH
Trinidad Asphalt Holdings Limited
Trinidad Norther Areas Limited
Trinmar Limited
Trintovac Developments Limited
United Kingdom Oil Pipelines Limited
Unterflur Betankungsanlage A.G. (UBAG)
West Australian Natural Gas Pty. Limited
Zaire Services des Entreprises Petrolières (Zaire S.E.P.)
Aktiebolaget Djurgardsberg
Association Petroliere Belge
Aviation Fueling Services, S.A.
Aviation Service Center
Compagnie Entreposage Communautaire
Singapore Refining Company Private Limited
Societe Belge de Transport Par Pipeline S.A.
Societe de Cabotage Petrolier S.A.
Societe du Pipeline Sud-European S.A.

Societe Nationale de Raffinage
Svensk Petroleumadminstration AB
Total Centrafricaine de Gestion
Societe Agricole des Entreprises Petrolieres
Union des Raffineurs Belges
Svensk Petroleumslagring Tre Aktienbolag
Societe Cameraunaise des Depots Petroliers (SCDP)
TNPL
AK Chemie GmbH & Co. KG
Bergemann KG
Braunkohle-Benzin AG
Knoops & Muller Mineralolhandel GmbH
Karlsruhe-Stuttgart Rohrleitung GmbH
Bremer Mineralolhandel GmbH
Dannenberg & Co. Mineralolhandel GmbH
Mdina Weave Ltd.
W. Knierim & Co. Mineralolhandel GmbH
Boske & Co. Mineralolhandel GmbH
HoeTex Beteiligungsgellschaft mbH
Wichmann Beteiligungsgellschaft mbH
Caluplast Farbenfabriken Wichmann
Zerssen Mineralolhandel GmbH & Co. GmbH

Getty Oil Company
Apple Valley Ranchos Water Co.
Arbuckle Pipe Line Company
Associated Oil Company

Basin Drilling Corp.
Bates Turner, Inc.
Bay Transport Corporation
Butte Pipe Line Company

Cable Enterprises, Inc.
Canadian Reserve Oil and Gas Ltd.
The Centennial Life Insurance Company
Chase Terminal Company
Chase Transportation Company
Chembond Corporation
Chembond of British Columbia Ltd.
Chemplex Company /
Chemplex Construction Corporation
Chisholm Pipeline Company
Colombian Reserve Oil and Gas Company
Colorado Yampa Coal Company
Colorado Yampa Leasing Company

Delaware Getty Pipeline, Inc.
Dieter Pohlmann & Co. GmbH

Easco Marine, Ltd.
Easco, S.A.
Employers Reinsurance Corporation
Entertainment and Sports Programming Network, Inc.
ERC Management Corporation

FFEC - Five, Inc.
FFEC - Four, Inc.
FFEC - Six, Inc.
FFEC - Two, Inc.
First Consulting and Administration, Inc.
First Excess and Reinsurance Corporation
First Excess and Reinsurance Corporation
(Bermuda) Ltd.
First Fidelity Equity Corporation
First Systems Corporation
FORM Foreign Reinsurance Management AG
Frontier Hotels, Inc.

Getcom, Inc.
Getty Arkoma, Inc.
Getty Asian Oil Company
Getty Canadian Metals, Ltd.
Getty Canadian Minerals, Limited
Getty Capital Corporation
Getty Chemical Company
Getty Coal Company
Getty Coal Leasing Company
Getty Crude Gathering, Inc.
Getty Crude Terminals, Inc.
Getty Eastern Pipeline Company
Getty Energy Company
Getty Fleet Corporation
Getty Gas Gathering, Inc.
Getty International, Inc.
Getty Iran Ltd.
Getty Marine (Bahamas) Limited
Getty Marine Corporation
Getty Marine Services Limited
Getty Maritime, Inc.
Getty Minerals Company
Getty Minerals Company, Limited
Getty Minerals Marketing, Inc.
Getty Mines, Limited
Getty Mining (Chile), Inc.
Getty Mining (Ireland) Ltd.
Getty Mining (Philippines), Inc.
Getty Mining (Portugal), Inc.
Getty Mining Company
Getty Mining International, Inc.
Getty Mining Northwest, Limited

Getty Mining Pty. Ltd.
Getty NGL Trading, Inc.
Getty Oil (Bahamas), Inc.
Getty Oil (Britain) Limited
Getty Oil (Cilacap), Inc.
Getty Oil (Congo), Inc.
Getty Oil (Germany), Inc.
Getty Oil (Guatemala), Inc.
Getty Oil (Ivory Coast), Inc.
Getty Oil (Morocco), Inc.
Getty Oil (Mossel Bay), Ltd.
Getty Oil (Pelabuhan Ratu), Inc.
Getty Oil (Peru), Inc.
Getty Oil (Sharjah), Inc.
Getty Oil (Suez), Inc.
Getty Oil (Sumatra), Inc.
Getty Oil (Tomori), Inc.
Getty Oil (Walvis Bay), Ltd.
Getty Oil Company
Getty Oil Company Foundation
Getty Oil Company of Spain S.A.
Getty Oil Development Company, Ltd.
Getty Oil Drilling Company
Getty Oil Exploration Company
Getty Oil Exploration (U.K.), Limited
Getty Oil International (Antilles) N.V.
Getty Oil International (Barito Basin), Inc.
Getty Oil International (Caribbean) N.V.
Getty Oil International (East Gharib Egypt), Inc.
Getty Oil International (Equatorial Guinea), Inc.
Getty Oil International (Ghana), Inc.
Getty Oil International (Guatemala), Inc.

Getty Oil International (Indonesia), Inc.
Getty Oil International (Ireland), Ltd.
Getty Oil International (Orient), Inc.
Getty Oil International (Somalia), Ltd.
Getty Oil International (Togo), Limited
Getty Oil International Exploration Company
Getty Oil Operations Company
Getty Petroleum Company
Getty Petroleum Ireland, Limited
Getty Pipe Company
Getty Pipe Line Company
Getty Pipeline, Inc.
Getty Refining and Marketing Company
Getty Rice Ranch Estates, Inc.
Getty Scientific Development Company
Getty Synthetic Fuels, Inc.
Getty Synthetic Fuels (Canada), Ltd.
Getty Trading (Italia) S.r.l.
Getty Trading (Nederland) B.V.
Getty Trading (U.K.) Ltd.
Getty Trading and Transportation Company
Getty Trading International, Inc.
Gibson Holdings, Ltd.
Gibson Petroleum Ltd.
Grande Properties, Inc.
Halbouy Alaska Oil Company
Hanover Financial Corporation
Hawkeye Chemical Company
Huelva Pyrites, Inc.
Iberian Petroleum Ltd.
Iricon Agency Ltd.

MAGEC Finance Company
Mediterranean (Algeria) Oil Company
Minnehoma Corporation
Minnehoma Cotton, Inc.
Minnehoma Development, Inc.
Minnehoma Land and Farming Company
Mitsubishi Oil Company, Limited
Mohawk Crude Purchasing Company
Mohawk Petroleum Corporation, Inc.

National Fidelity Life Insurance Company
Norske Getty Exploration A/S
North Slope Gas Transmission Corporation
North Slope Pipe Line Corporation
Northern Tier Pipeline Company
Nuclear Fuel Services, Inc.

Oklahoma Basin Drilling Corp.
Osage Pipe Line Company

Pacific Western Oil Corporation
Petroman, Inc.
Petrotomica Company
Plains Pipe Line Company
Plateau Company
Plateau Leasing Company
Plateau Leasing Company, Inc.
Plateau Mining Company
Pontotoc Oil Company

Reserve Oil and Gas Company
Seminole Pipeline Company
Seville Metals Corporation
Seville Metals Corporation
Y Compania Sociedad Regular Colectiva

Skelgas, Inc.
Skelly Leasing Company
Skelly Oil Company

Texas-New Mexico Pipe Line Company
Texoma Pipe Line Company
Tide Water Oil Company (India), Limited
Tidewater Oil Company
Twentymile Coal Company

Uinta Pipeline Corporation

Vancouver Plywood Co., Inc.
Vanply, Inc.
Vanply of Liberia, Inc.

Wascana Pipe Line, Inc.
Wascana Pipe Line, Ltd.
Wesco Gas Services, Inc.
Wesco G.m.b.H.
Wesco International, Inc.
Wesco Petroleum, Ltd.
Wesco Pipe Line Company
West Shore Corporation
Western Crude Oil, Inc.
Western Gravities, Inc.
Wyo-Cal Oil, Inc.

Yong-Nam Chemical Company, Ltd.

Union Oil Company of California

Ace Gas, Incorporated

Adobe Canyon Corporation

Badger Pipe Line Company

Brea Agricultural Service, Inc.

Chemcentral Corporation

Chicap Pipe Line Company

Colonial Pipeline Company

Companhia Brasileira De Metalurgia E Mineracao

Cook Inlet Pipe Line Company

Cymoly Corporation

Everglades Pipe Line Company

Gravcap, Inc.

Gravity Adjustment, Inc.

Inland Corporation

International Speedway Corporation

Kaneb Services, Inc.

Los Angeles Oil Company, The

Maitland

Magma Power Company

Miami Valley Corporation

Mid-County Chemical Co.

Moreland/Hapsmith Partnership

Moreland/John Martin Company

Moreland/Pulley

Moreland/Tarnutzer-Hamilton

Platte Pipe Line Company

Quebec Columbium, Ltd.

Sepulveda Oil & Gas Company
South Saskatchewan Pipe Line Company
Southcap Pipe Line Company
Southern California Petroleum
Superior Deshler Co.

Tecumseh Pipe Line Company
THUMS Long Beach Company

UNOCAL Corporation
UNOCO (Philippines), Inc.
USZ Associates
USZ Hotel Venture

Van Salt Water Disposal Company

West Shore Pipe Line Company
West Texas Gulf Pipe Line Company
Wolverine Pipe Line Company

Yellowstone Pipe Line Company

Appendix D

Amendment I

Restrictions on Powers of Congress

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

Right to Bear Arms

A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

Billeting of Soldiers

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

Seizures, Searches and Warrants

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

Criminal Proceedings and Condemnation of Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

Mode of Trial in Criminal Proceedings

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

Trial by Jury

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Bails—Fines—Punishments

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

Certain Rights Not Denied to the People

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

State Rights

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Office - Supreme Court, U.S.

FILED

NOV 21 1984

(3)
ALEXANDER L STEVAS,
CLERK

NO. 84-654

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

CHEVRON CORPORATION, et al.,
Petitioners,

vs.

STATES OF ARIZONA, CALIFORNIA, FLORIDA, et al.,

Respondents.

OPPOSITION TO PETITION FOR A WRIT OF
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QUESTION PRESENTED FOR REVIEW

**Does a governmental entity have a right to
jury trial under the Seventh Amendment?**

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NO. 84-654

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

CHEVRON CORPORATION, et al.,

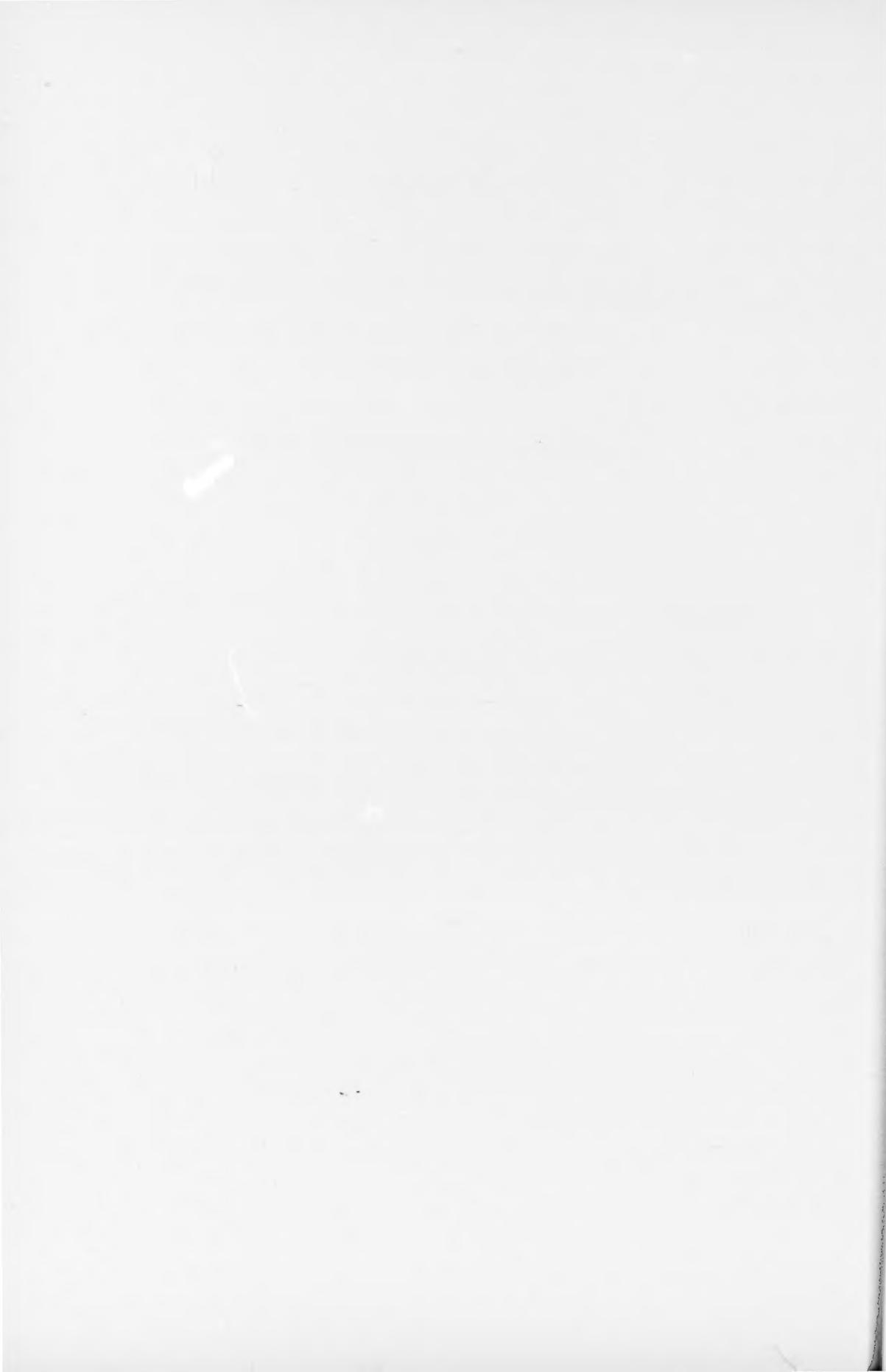
Petitioners,

vs.

STATES OF ARIZONA, CALIFORNIA, FLORIDA, et al.,

Respondents.

**OPPOSITION TO PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT**



JURISDICTIONAL GROUND

Petitioners would invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

This case involves the Seventh Amendment to the United States Constitution.

STATEMENT OF THE CASE

The test for whether the Seventh Amendment right to jury trial obtains has been well settled in this Court and the rest of the lower courts for over 200 years. The test is the so-called historical test: what issues have traditionally been tried to juries at common law. In addition to the decision below, well reasoned decisions in the Third and Tenth Circuits have held that this historic right applies where a governmental entity brings a legal action in federal court. E.E.O.C. v. Corry Jamestown Corp. (3d Cir. 1983) 719 F.2d 1219; United States v. New Mexico (10th Cir. 1981) 642 F.2d 397. No conflict among in the Circuits nor any other policy reason requires this Court to reassess the well-established historical test of the right to jury trial.

Petitioners, the oil companies, argue that the history of the Seventh Amendment shows that it was intended only as a right of the individual; however, their version of the history of the Seventh Amendment is not only incomplete but also irrelevant to the issue

before this Court. While the Seventh Amendment clearly protects the citizen's right to jury trial, nothing in its language or history confines it solely to citizens or undermines the historic common law usage of juries in virtually all civil actions at law.

In arguing that the courts should now consider not only what is at issue but also who are the parties, petitioners postulate a radical departure from centuries of American as well as English jurisprudence. Their test would not only sweep aside the historic practice under the federal antitrust laws but also historic practice in all statutory and common law actions.

Underlying petitioners' argument is the idea that the sovereign which creates and controls the courts is not entitled to the protection or safeguard of jury trial. While this doctrine might have tenuous merit vis-a-vis the federal government, it has no merit with regard to state and local governments which are strangers to the federal courts.

Policy considerations as well as history argue against petitioners' attempt to constrict the states' right to a jury. The jury is the voice of the community in the judicial process. No useful purpose could possibly be served by muting that voice merely because a state seeks their judgment. Further, since the test defendants advocate potentially calls for a case-by-case determination of what type of

governmental entity is involved or whether an individual needs protection from oppression, it could introduce substantial uncertainty and unfairness into determining the right to a jury determination.

Few exceptions to the right to jury trial have historically been recognized in civil actions at law. Defendants have failed to establish by precedent or policy that such an exception should be recognized here.

Finally, the rights of citizens are indeed involved in this case. The states have sued on behalf of their citizens as class representatives and as parens patriae. Therefore, whatever arguments may support limiting the government's right to jury trial, none supports limiting the right of the citizens in this case.

ARGUMENT

I. THE TEST OF THE SEVENTH AMENDMENT RIGHT IS THE ISSUE TEST WHICH CLEARLY PROVIDES A JURY HERE.

From its earliest consideration of the matter, this Court has applied the issue test to determine the right to a jury: "[T]he Seventh Amendment question depends on the nature of the issue to be tried"^{1/} Ross v. Bernhard (1970) 396 U.S. 531, 538;

^{1/} The language of Federal Rule of Civil Procedure 38 assumes that the historic issue test applies; Rule 38(b) states:

"(b) DEMAND. Any party may demand a trial by jury of any issues triable of right by a jury"

Dimick v. Schiedt (1935) 293 U.S. 474; Parsons v. Bedford, Breedlove & Robeson (1830) 3 Pet. [28 U.S.] 433; Dairy Queen, Inc. v. Wood (196?) 369 U.S. 469.

Without exception, the federal courts have found that the issue test mandates a jury trial in antitrust damage actions. See Fleitman v. United Gas Improvement Co. (2d Cir. 1914) 211 F. 103, 105, affd. (1916) 240 U.S. 27, 29; Curtis v. Loether (1974) 415 U.S. 189, 195-96.

Since this case is undeniably an antitrust damage action, the issue test would clearly mandate a jury trial here.

II. FEDERAL, STATE AND LOCAL GOVERNMENTS ARE ENTITLED TO A JURY IN FEDERAL COURT FOR ACTIONS AT LAW.

Contrary to the oil companies' arguments, the issue test of the jury right is the only applicable test when a government entity litigates in federal court. This principle is based on a substantial body of American jurisprudence which gives domestic as well as foreign governmental bodies the same rights as individuals to assert claims under federal law. See Pfizer Inc. v. Government of India (1978) 434 U.S. 308, 315-320; E.E.O.C. v. Corry Jamestown Corp. (3d Cir. 1983) 719 F.2d 1219; United States v. State of New Mexico (10th Cir. 1981) 642 F.2d 397.

In United States v. State of New Mexico, supra, the Tenth Circuit held that the federal

government's suit to recover unlawfully collected taxes was historically an action at law and that the right to jury trial was secured in such an action by the Seventh Amendment. 642 F.2d at 402.

More recently, in E.E.O.C. v. Corry Jamestown Corp., supra, the Third Circuit held that the E.E.O.C., a federal commission, had a right to a jury trial under the Seventh Amendment:

"To say that the Commission may not rely on the Seventh Amendment would be to ignore the historical development of the right to jury trials in civil actions." 719 F.2d at 1224.

The New Mexico and Corry Jamestown cases are not isolated holdings. American jurisprudence, following English practice, has long recognized that government entities, be they federal, state, local or foreign, enjoy the same rights and privileges as individuals when they bring suit in federal court.

It is well settled that the federal government may institute a common law action on the same basis as an individual. In Dollar Savings Bank v. United States (1873) 19 Wall. (86 U.S.) 227, this Court held that, based on historic English doctrine, the United States could bring a common law action for debt to collect taxes, even though the government was not specifically authorized to bring that form of action under the tax statute: "He [the King] may even take the benefit of any action though not named. The rule . . . is equally

applicable to this government." 19 Wall. (86 U.S.) at 239.

Historically, the rights and privileges of individuals have also been extended to foreign sovereigns:

"To allow a foreign sovereign to sue in our courts for treble damages to the same extent as any other person injured by an antitrust violation is thus no more than a specific application of a long-settled general rule." Pfizer v. Government of India, supra, 434 U.S. at 318-19, (emphasis added).

The right was previously given to state and local governments who were deemed "persons" with standing to bring suits under the federal antitrust laws. Georgia v. Evans (1942) 316 U.S. 159; Chattanooga Foundry & Pipe Works v. City of Atlanta (1906) 203 U.S. 390.

Since Chattanooga, supra, the states in this action and many other state, local and governmental entities have routinely tried numerous federal treble damage actions before juries. The right to a jury in these cases is an inherent aspect of the states' standing to bring this type of action.

In other areas, the federal courts have recognized that the states are entitled to some of the same rights as citizens under the federal scheme. In State of California v. United States (9th Cir. 1968) 395 F.2d 261, the court held that California was entitled under the Fifth Amendment to compensation from the

federal government for the taking of land, even though the Amendment states: "nor shall private property be taken for public use, without just compensation." See United States v. Carmack (1946) 329 U.S. 230, 242; City of St. Louis v. Western Union Telegraph Co. (1893) 148 U.S. 92, 101.

Although the Sixth Amendment provides a jury trial to the "accused," this Court has held that the federal government has the right to insist upon a jury trial despite defendant's waiver:

". . . the Government has a legitimate interest in seeing that cases in which it believes a conviction is warranted are tried before the tribunal [a jury] which the Constitution regards as the most likely to produce a fair result." Singer v. United States (1965) 380 U.S. 24, 36.

III. THE HISTORY OF THE SEVENTH AMENDMENT: THE RIGHT TO JURY TRIAL WAS NOT LIMITED TO CITIZENS.

Although the history surrounding the adoption of the Seventh Amendment shows concern for the citizens' rights, the Amendment both secures those rights and incorporates the broader practice at common law.

Much of the impetus for adopting the Seventh Amendment came from colonists, mostly anti-federalists, who feared the power of the emerging federal government. This was the case, because the newly drafted Constitution did not mention jury trials. However, the language adopted in the Seventh

Amendment and the surrounding history do not indicate that the Amendment was intended to operate solely to protect the individual against the government. See Wolfram, Constitutional History of the Seventh Amendment (1973) 57 Minn.L.R. 639 (hereinafter Wolfram).

While many colonial and territorial charters, resolutions, and tracts at that time spoke in terms of the people, citizens, persons, "man and man," none of this language was used in the Seventh Amendment. See Wolfram, supra, 57 Minn.L.R. 639. Other Amendments in the Bill of Rights use the terms people, person, the accused, yet the language of the Seventh Amendment that was finally adopted does not speak merely to the rights of the citizens or people: "[i]n suits at common law the right of trial by jury shall be preserved."^{2/}

^{2/} Construction of similar language in the Fifth Amendment led the court in State of California v. United States (9th Cir. 1968) 395 F.2d 261, to conclude that California had a right to just compensation for a taking by the federal government.

Although the Sixth Amendment gives the "accused" the jury right in criminal cases, the government, nevertheless, has the right to demand a jury. Singer v. United States (1965) 380 U.S. 24, 36. This language represented a congressional committee revision which dropped James Madison's proposal using the words "between man and man." Since there is no record of debate in Congress or in the colonial ratification proceedings of the proposed or final wording, the immediate legislative history is not helpful. Wolfram, supra, 57 Minn.L.R. at 725-730, citing 1 Annals of Cong. at 435, 447, 767.

Elbridge Gerry, a member of the congressional committee that drafted the final language of the Amendment, and Alexander Hamilton favored the jury trial on general fairness grounds. Both thought that judges were more likely to be corrupt or biased than juries. The fairness concern applies whether the government or a private party is involved. See Wolfram, supra, 57 Minn.L.R. at 709-710, citing 2 Records of the Federal Convention of 1787, at 587 (M. Farrand ed. 1911) and The Federalist No. 83, at 563-64 (J. Cooke ed. 1961). See also Higginbotham, Continuing Dialogue: Civil Juries and the Allocation of Judicial Power, (1977) 56 Tex.L.R. 47.

The most reasonable conclusion from the language and all the circumstances is that the Seventh Amendment was not limited to giving citizens the right to a jury but that the broader common law usage was adopted.

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IV. THE RIGHT TO JURY TRIAL AT
COMMON LAW IS DETERMINED BY
HISTORICAL USAGE IN ENGLAND.

In suits at common law, the Seventh Amendment "preserves" the right to jury trial. The language suggests a neutral design for the amendment, neither expanding nor contracting this right to jury trial as it existed in 1791. As this Court stated in Atlas Roofing Co. v. Occupational Safety Comm. (1977) 430 U.S. 442, 459-60. "The Seventh Amendment was declaratory of existing law . . . It took the legal order as it found it . . ." See generally Jorde, The Seventh Amendment Right to Jury Trial of Antitrust Issues, 69 Cal.L.R. 1.

To understand and give content to the scope of the right that is preserved, this Court has made clear that reference must be made to the common law of England as it existed in 1791, the year the Seventh Amendment was adopted. The essence of this Court's historical approach to the Seventh Amendment is thus an inquiry into what matters were actually decided by English juries in 1791. United States v. Wonson (C.C.D.Mass. 1812) 28 F.Cas. 745, 750; Capital Traction Co. v. Hof (1899) 174 U.S. 1, 8; Baltimore & Carolina Line v. Redman (1935) 295 U.S. 654, 657; Dimick v. Schiedt (1935) 293 U.S. 474, 476; Parklane Hosiery Co., Inc. v. Shore (1979) 439 U.S. 322, 344-45.

Most commentators have acknowledged the primacy of the historical test in the Seventh Amendment jurisprudence.^{3/}

While the petitioner oil companies have cited many colonial and territorial charters, constitutions and other documents on securing the right of jury trial to the people, the practices and intentions of the colonists have not been used by the courts to determine the application of the Seventh Amendment. In the first case to construe the language of the Seventh Amendment, Mr. Justice Story stated:

"Beyond all question, the common law here alluded to [in the Seventh Amendment] is not the common law of any individual state, (for it probably differs in all), but is the common law of

^{3/} F. James & G. Hazard, Civil Procedure (1977) section 8.1, at 347-48; Moores Federal Practice (2d ed. 1980) Vol. 5, ¶ 38.08 [5.-4] (hereinafter Moores); 9 C. Wright & A. Miller, Federal Practice and Procedure (1973) section 2309, at 14; Wolfram, supra, 57 Minn.L.R. at 639-45, 648-49, 720-21; Henderson, The Background of the Seventh Amendment (1966) 80 Harv.L.R. 289; McCoid, Procedural Reform and the Right to Jury Trial, etc. (1967) 116 U.Pa.L.R. 1, 1-2; Shapiro & Coquillette, The Fetish of Jury Trial In Civil Case, etc. (1971) 85 Harv.L.R. 442, 448.

England"4/ United States v. Wonson, supra, 28 F.Cas. 745, 750.

Accord, Colgrove v. Battin (1973) 413 U.S. 149, 154-55; Capitol Traction Co. v. Hof, supra, 174 U.S. at 8; Wolfram, supra, 57 Minn. at 641, 731. "No federal case decided after Wonson seems to have challenged this sweeping proclamation." Id., at 641.

V. THE GOVERNMENT IN ENGLAND WAS
HISTORICALLY ENTITLED TO A JURY
IN ACTIONS AT LAW: THE UNITED STATES
ADOPTED THIS PRACTICE.

Jury trials originated as a prerogative and tool of the Crown: ". . . the king gave out the privilege, for private litigation Henry (II) made jury trial a constant legal right instead of occasional boon." Rembar, The Law of Land (1980); Plucknett, A Concise History of the Common Law, (2d 1936) pp. 105-106. As petitioners have shown, that right was gradually secured to the people by such charters as the Magna

4/ Defendants have cited a New Hampshire case, Wooster v. Plymouth (1882) 62 N.H. 193, for the proposition that the government has no constitutional right to jury trial. Since constitutions and constructions of the common law differed in the various colonies (and thereafter in those states), this precedent is not relevant in construing the United States Constitution; United States v. Wonson, supra; Wolfram, supra. Furthermore, decisions on the rights and powers of a sovereign or government in its own courts are of little use here where the governments in this case are not in their own courts; see Part VII, infra.

Carta. Thus, contrary to petitioners' contention, entitlement to a jury was never lost to the Crown or the government.

In eighteenth century England as in centuries past, how civil suits were tried was determined in the same fashion regardless whether the government or an individual asserted claims. The right to a jury was determined by the issue not the party. Trial was before a jury where the suit was an action in the courts of law as opposed to an equitable action in the chancery courts.

The Crown had the prerogative of suing in any court he pleased:

"It is the prerogative of the King that he may sue in any court he pleases." Brownloe v. Milchell (1616) 1 Roll.Rep. 288, cited in Butterworths, The English and Empire Digest (1975), Vol. II, Part VIII, sect. 5, sub. 2, p. 703 (hereinafter Butterworths). Walwin v. Brown (1461) Y.B. 39 Hen. 6, fo. 26, pl. 36 cited in Butterworths, supra, Vol. II at 703.

However, the Crown's prerogative did not determine the mode of trial but merely the forum. In actions at law, the Crown or government had a historic right to a trial at bar which was a trial before two judges and a jury. Halsbury's Laws of England 4th (1974) Vol. 8, § 1280, p. 792, citing A.G. v. Walsh (1832) Hayes & Jo 65; Halsbury's, supra, Vol. II, § 1406, p. 745; Dixon v. Farrer (1886) 18 Q.B.D. 43, cited in Butterworths, supra, at 703; Paddock v. Forester, 1 M.

& G. 583, cited in Fisher's Harrison Digest 1856-1870, Vol. 4, p. 8427.

In addition to the right to trial at bar, the Crown had the prerogative of removing all causes affecting Crown property to the exchequer courts, where trial of issues of fact was to a jury. A.G. v. Constable (1879) 4 Ex.D. 172, cited in Butterworths, supra, Vol. II, at 703-4; see United States v. Athens Armory (N.D.Ga. 1868) 24 F.Cas. 878, cited infra, p. 23. The English exchequer courts were the forum in which the Crown customarily sued to collect taxes and confiscate property.

The practice in England was adopted by our federal courts in confiscation cases brought by the federal government:

"The principles governing the district courts of the United States in the determination of seizures of this kind are in accordance with the common law, and the trial has, hitherto, been in pursuance of the manner of the English exchequer on informations in rem. [sic] where the decision of issues of fact devolve on a jury. U.S. v. The Betsey, 4 Cranch [8 U.S.] 443; Six Hundred and Fifty-One Chests of Tea v. United States, [Case No. 12,916]; U.S. v. Fourteen Packages, [Id., 15,151]; The Sarah, 8 Wheat. [21 U.S.] 391." United States v. Athens Armory (1868) 24 F.Cas. 878, 881, Case No. 14,473.

See also C.J. Hendry Co. v. Moore (1943) 318 U.S. 133.

In tax as well as confiscation cases brought by the United States, the courts have held that they are actions at law and that the ". . . issues of fact, on demand of either party, must be tried by jury." Union Ins. Co. v. United States (1867) 6 Wall. [73 U.S.] 759, 764; Armstrongs Foundry (1867) 6 Wall. [73 U.S.] 766, 769; United States v. Hart (1867) 6 Wall. [73 U.S.] 770, 773; The Sarah (1823) 8 Wheat. [21 U.S.] 391, 392; Shawnee Nat. Bank v. United States (8th Cir. 1918) 249 F. 583, 585; see also Damsky v. Zavatt (2d Cir. 1961) 289 F.2d 46, 49-51 (action by United States for taxes; this case contains a lengthy discussion of the use of juries in the English exchequer courts); United States v. Lyman (C.C.D.Mass. 1818) 26 F.Cas. 1024.

VI. THE LONE PRECEDENT CITED BY DEFENDANTS DOES NOT SUPPORT DENIAL OF A JURY IN CASES BROUGHT BY THE GOVERNMENT.

Defendants have cited only one federal case, United States v. Griffin (W.D.Va. 1926) 14 F.2d 326, for the general proposition that the government has no right to jury trial. Since Griffin, supra, involved condemnation by the government, an issue which was not historically tried to a jury, it cannot, by any reasonable stretch of the imagination, stand for the broad principle that the government is, in general, not entitled to a jury:

"It may be taken as settled that there is no constitutional right to a jury trial in an action by

the United States to condemn property under the power of eminent domain. . . ." 5 Moores, supra, ¶ 38.32 [1], pp. 38-250 through 38-251.

As explained below, Griffin, supra, is an anomaly that stands for very little.

At the outset we note that the Griffin case has never been cited by a single federal court for the broad proposition that governmental entities do not have a right to jury trial. Indeed, the trial court actually assumed that the government had a general right to jury trial in civil cases, but believed that the right existed historically at common law or was granted by statute:

"But the right of govement to a jury trial, when it exists, is given by common law and by statute, and was not, because of the intent and purpose of the Seventh Amendment, given by the Constitution. The simplest and best reason for saying that the Seventh Amendment does not preserve a right in the government to trials by jury is that there was not the slightest need for such intent. . . ." 14 F.2d 326, at 327.

However, the Griffin court misconstrued the scope of the Seventh Amendment. Since the Seventh Amendment preserves the right as it existed at common law, it also secured that right to the government.

The apparent reason that the court interpreted the Seventh Amendment as it did was to

provide a non-constitutional ground for holding that the Weeks Act condemnation procedures, which did not provide for jury trial right, superseded any earlier common law or statutory jury right that the government had. If the government's jury trial right were preserved by the Seventh Amendment, then the court would have had to acknowledge and deal with the inconsistency of the Weeks Act provisions and the Seventh Amendment.

The court's alternative holding actually met the issue head-on, finding that even if the government has a Seventh Amendment right, Congress had waived it, because the Weeks Act provided no jury trial.

VII. THE GOVERNMENTAL PLAINTIFFS IN THIS CASE ARE NOT THE SOVEREIGN THAT DEFENDANTS' THEORY ADDRESSES.

Underlying the oil companies' argument is the idea that the jury is a protection from the sovereign who controls the courts:

"I believe the great mass of the people who opposed it [the Constitution] dislike it because it did not contain effectual provisions against the encroachment on particular rights and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power." 1 Annals of Cong. 433 (1789) (Speech of James Madison to the first Congress which considered the initial amendments to the Constitution.)

State and local governmental entities do not, of course, control the federal courts. When they sue in their proprietary capacity for damages, they suffer the same disabilities and need the same protections as citizens. Both are strangers to the federal system.

In Georgia v. Evans, supra, 316 U.S. 159, the Supreme Court recognized that a state is not like the federal government and has the same need for federal rights under the antitrust laws as the individual does:

"The State of Georgia, unlike the United States, cannot prosecute violations of the Sherman Law. Nor can it seize property . . ." 316 U.S. at 162.

This case recognized that the federal government had the power to define the nature of rights and actions in its own courts, while states and other governments may not do so in federal court. Thus, the federal government may, by statute, provide itself with a jury in any case where such right may be in doubt.

VIII. POLICY CONSIDERATIONS.

In postulating that only individuals have the right to a jury under the Seventh Amendment, petitioners argue for nothing less than a basic reassessment of the traditional issue test that has been long settled in English and American jurisprudence. In arguing for a test based generally on the identity of the parties, petitioners would repudiate the historic issue test and dramatically contract the scope of jury right.

In addition, the right would be subject to potential uncertainty and discriminatory application. Before this important right is changed or constricted, a number of policy considerations should be explored:

"Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history that any seeming curtailment of the right to jury trial should be scrutinized with the utmost care." Dimick v. Schiedt, supra, at 293 U.S. 474, 486.

Petitioners have raised some unsettling problems in advocating their new test for the right to a jury. If the jury right was designed solely to protect the individual from government oppression, how then do we analyze the great mass of cases that involve only individuals? If the government is involved must we provide a jury only when there is a potential for oppression flowing from the nature of the government entity's sovereignty or the nature of the case? How do we measure the potential for oppression? One might question whether a large institution or corporation needs protection from oppression. The petitioning oil companies are economic entities larger than many nations. Under their test would such companies, just as foreign and domestic governments, be denied the jury right?

In characterizing the jury as merely an individual's shield from oppression, the oil companies have ignored the broader function of the jury. A jury insures that court decisions will reflect community values. The interest of litigants in having a community-based jury find the facts in a given case is as important to governmental entities as it is to their citizens. Governmental entities are as concerned as citizens that important cases be decided by a community-based jury, the fact-finder considered most fair by the Constitution. See Singer v. United States, supra, 380 U.S. at 36.

Petitioners have made a forceful case for securing the jury right to individuals. However, that is not the issue here; no individual's right to a jury is now in jeopardy. What is in issue, indeed in jeopardy, is the historic use of the jury in virtually all civil actions at law. Under the guise of protecting individual rights, defendants would now limit the jury's historic role. To what purpose? Even if one accepts the proposition that the jury shields the individual against government oppression, how can oppression occur if a jury is provided rather than denied?

History has recognized very few exceptions to the jury right in civil actions at law. See 5 Moore,

supra, ¶ 38.08; Millar, Civil Procedure of the Trial Court in Historical Perspective (1952) p. 260. Petitioners have failed to show that history or policy supports an exception here.

IX. THE STATES' CLAIMS FOR THEIR CITIZENS PARENTS PATERIAE AND AS CLASS MEMBERS ARE ENTITLED JURY TRIAL.

In addition to making damage claims for state and local government purchases, the states claim damages on behalf of their citizens as class members and parens patriae (pursuant to 15 U.S.C. § 15(c) and various state law provisions). Defendants have not challenged the well-settled principle that citizens are entitled to a jury trial in damage actions under the antitrust laws. The court below reasoned correctly that the citizens in this case must not be denied a jury simply because others represent them:

". . . the Supreme Court has held that the right to jury trial on underlying claims is unaffected by the fact that suit is brought by someone acting in a representative capacity . . ."

Ross v. Bernhard, 396 U.S. 531 (1970).

Similarly, in E.E.O.C. v. Corry Jamestown Corp. (3d Cir. 1983) 719 F.2d 1219, 1225, the Third Circuit held that when the Equal Employment Opportunity Commission brings suit on behalf of a victim of age discrimination, the Commission is entitled to a jury trial. The Court explained that it

would be inequitable and anomalous to hold that an individual otherwise entitled to a jury trial is deprived of that right because the Commission choose to bring suit on his behalf." (Petitioners' Appendix, at A-23; 738 F.2d at 1031.)

Here it would also be anomalous to deny the right to a jury. Since individual citizens would have the right to a jury trial on their individual claims, that right should not be affected by the fact that the states are bringing claims on their behalf.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Dated: November 20, 1984.

Respectfully submitted,

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No. 84-654

In the Supreme Court
OF THE
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OCTOBER TERM 1984

CHEVRON CORPORATION, et al.,
Petitioners,

VS.

ARIZONA, CALIFORNIA, FLORIDA, et al.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Ninth Circuit

BRIEF AMICUS CURIAE OF THE
CITY OF LONG BEACH
~~IN SUPPORT OF AFFIRMANCE~~

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VS.

ARIZONA, CALIFORNIA, FLORIDA, et al.,
Respondents.

BRIEF AMICUS CURIAE OF THE
CITY OF LONG BEACH¹

QUESTION PRESENTED

Does a government entity have a right to jury trial?

REASONS WHY THE WRIT SHOULD BE DENIED

1. The Ninth Circuit correctly decided that a government entity has a constitutional right to jury trial.

The Ninth Circuit recognized that there was no legal basis whatsoever for Petitioners' bald assertion that the Seventh Amendment right to civil jury trial did not apply to government entities. Petitioners' unsupported theory

¹The City of Long Beach is a plaintiff in a related MDL-150 case. Under Rule 36.4 of this Court, consent of the parties to the filing of this brief is unnecessary inasmuch as the City of Long Beach is a political subdivision of the State of California. Nevertheless, written consent of Chevron, the party responsible for drafting and filing the Petitioners' brief, and of respondent State of California is on file with the Clerk in compliance with Rule 36.1 of this Court.

was disposed of on the basis of this Court's long-established precedent concerning the right to jury trial. Trial by jury "has always been, and still is, generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases at law as well as in criminal cases." *Dimick v. Schiedt*, 293 U.S. 474, 485-86 (1934).

The Ninth Circuit reaffirmed that antitrust suits for treble damages raise legal issues that are triable to a jury by applying the historical, issue-oriented test for determining when matters are jury triable under the Seventh Amendment. *United States v. Wonson*, 28 F.Cas. 745, 750 (C.C.D.Mass. 1812) (Story, J.); *Baltimore & Caroline Line, Inc. v. Redman*, 295 U.S. 654, 657 (1935); *Ross v. Bernhard*, 396 U.S. 531 (1970); *Curtis v. Loether*, 415 U.S. 189 (1974); *Pernell v. Southall Realty*, 416 U.S. 363 (1974).

The Ninth Circuit correctly held that neither the party-neutral language of the Seventh Amendment nor established case law supports Petitioners' attempt to limit the right to jury trial to individuals. The Ninth Circuit properly refused to find Petitioners' few selected quotations from colonial history a sufficient basis for radically altering traditional Seventh Amendment analysis. (Pet.Br. App. A, 16-21.) Moreover, the relevant history for interpreting the Seventh Amendment — what English juries did in 1791 — demonstrates that the government did in fact enjoy the right to jury trial. (Pet.Br. App. A, 14-15, discussing several English cases.)

2. The Petition does not raise an important question of federal law which this Court should review.

As discussed above, the legal test for determining the scope of the Seventh Amendment right to civil jury trial has been well established by decisions of this Court. The

Ninth Circuit followed those cases in rejecting Petitioners' unfounded claim that government entities do not have a right to jury trial. Given the complete lack of authority for Petitioners' position, it is not surprising that the question is one of "first impression," as the Petitioners note. That, however, hardly makes the question sufficiently important to warrant review by this Court on *certiorari*.

Furthermore, there is no conflict among any Circuit Courts of Appeal on this question. Indeed, the only two other Circuit Courts that have addressed the question have held that government entities do have a right to jury trial, *United States v. New Mexico*, 642 F.2d 397, 400-401 (10th Cir. 1981) (State of New Mexico entitled to a jury trial); *E.E.O.C. v. Corry Jamestown Corp.*, 719 F.2d 1219, 1224-25 (3rd Cir. 1983) (Equal Opportunity Commission entitled to a jury trial.)

CONCLUSION

Petitioners' position is that cities, states and other government entities never have a right to jury trial. In petitioners' view, cities would have no right to jury trial in the whole range of litigable matters in which cities are involved, including tort suits, municipal bus accidents, grievances filed by city employees, business matters, contractual disputes and the wide variety of other disputes which frequently proceed to trial. There is absolutely no authority for such wholesale bar to a government entity's right to jury trial. For the foregoing reasons, the petition for a writ of certiorari should be denied.

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REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
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FOR THE NINTH CIRCUIT**

Petitioners submit this reply brief to address certain arguments raised in the opposition briefs filed by respondents ("States' Br.") and by amicus curiae, the City of Long Beach ("City's Br.").¹

REASONS FOR GRANTING CERTIORARI

Although acknowledging that petitioners "have made a forceful case for securing the jury right to individuals" (States' Br., p. 20), respondents contend that the language of the Seventh Amendment and the surrounding history do not prove that the Amendment was limited to private parties (States' Br., p. 8). However, respondents are unable to

¹A list of petitioners' subsidiaries (except wholly owned subsidiaries) and affiliates is contained in Appendix C (p. A-27) to the petition for certiorari.

cite even a single historical reference showing that the Framers intended to extend the right to jury trial to government entities.

Respondents rely primarily on the "historical test" which they assert has been well settled for over 200 years (States' Br. p. 1). But the historical test is not in issue here. The question here is whether a government entity has the constitutional right of jury trial. This Court has never resolved that question.²

In another case where this Court was called upon to address a new issue squarely for the first time, the Court stated:

"The fact that powers long have been unexercised well may call for close scrutiny as to whether they exist; but if granted, they are not lost by being allowed to lie dormant, *any more than nonexistent powers can be prescribed by an unchallenged exercise*" (*United States v. Morton Salt Co.* (1950) 338 U.S. 632, 647) (emphasis added).

Further, it is settled that

"Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents" (*Webster v. Fall* (1925) 266 U.S. 507, 511).

²Respondents cite several tax and confiscation cases for the proposition that in actions at law where the United States is a party "issues of fact, on demand of either party, must be tried by jury" (States' Br. p. 15). However, in none of those cases did the Court address the question presented here.

Although the question presented here has not been resolved by this Court, a contention similar to petitioners' was made by the United States in *Atlas Roofing Co. v. Occupational Safety and Health Review Commission* (1977) 430 U.S. 442. The issue there was whether the Seventh Amendment precluded Congress from assigning to an administrative agency the task of adjudicating alleged violations of the Occupational Safety and Health Act of 1970. The Solicitor General argued that the Framers did not intend the Seventh Amendment to apply to either party in government litigation:

“[T]he character of the parties itself puts the matter beyond the reach of the [Seventh Amendment] * * *. [T]he Seventh Amendment is concerned only with *private* litigation * * *. [T]he Seventh Amendment was never intended to control government litigation of *any* kind in *any forum*” (Respondents' Br. in *Atlas*, pp. 17-18).

That conclusion, according to the Solicitor General, is plainly revealed in the history surrounding the adoption of the Seventh Amendment (*id.*, p. 17).³

Respondents assert that *United States v. Griffin* (W.D. Va. 1926) 14 F.2d 326 should be disregarded because it was an eminent domain case in which there is now no constitutional right to jury trial (States' Br., pp. 15-16). However, at the time *Griffin* was decided, landowners in the Fourth Circuit had a constitutional right to jury trial in eminent domain cases (*Beatty v. United States* (4 Cir. 1913) 203

³The Court found that it was not necessary to reach this argument in *Atlas* inasmuch as it affirmed the lower court on a narrower ground (430 U.S. at 449, n. 6). Although the Federal government's argument in *Atlas* was broader than the one petitioner advances here, it clearly supports our narrower position.

Fed. 620, error dismissed and certiorari denied (1914) 232 U.S. 463).⁴

The importance of *Griffin*, however, is not its ruling on whether a jury attaches in eminent domain cases, but the Court's recognition that the Seventh Amendment was not intended to protect the government:

"The simplest and best reason for saying that the Seventh Amendment does not preserve a right in the government to trials by jury is that there was not the slightest need for such intent, and that the obvious purpose was not to preserve such right, but was to preserve the right of the people as against the government" (14 F.2d 326, 327).

Respondents cite *Dimick v. Schiedt* (1935) 293 U.S. 474, 486 for the obvious proposition that "any seeming curtailment of the right to jury trial should be scrutinized with the utmost care" (States' Br., p. 19; see also City's Br., p. 2). But the jury trial right "scrutinized" in that case was the right of private parties, not government entities. Indeed the Court expressly recognized in *Dimick* that the right to jury trial is sacred to the citizen:

"The right of trial by jury is * * * 'the most transcendent privilege which any subject can enjoy'" (id., p. 485) (citing 3 Blackstone, p. 379) (emphasis added).

State of California v. United States (9 Cir. 1968) 395 F.2d 261 does not support respondents' assertion that public property is protected by the "just compensation" clause of the Fifth Amendment (States' Br., p. 6). As this Court has recognized, the principle of "natural equity"—not the Fifth Amendment—requires the Federal government to

⁴*Beatty* was subsequently overruled in *United States v. Reynolds* (1970) 397 U.S. 14 (see 5 Moore, Federal Practice ¶ 38.32(1), pp. 255-258).

compensate public condemnees when it exercises its power of eminent domain (see, e.g., *Monongahela Navigation Co. v. United States* (1893) 148 U.S. 312, 324-325; *United States v. Carmack* (1946) 329 U.S. 230, 241-242). In attributing the Federal government's "just compensation" obligation to the Fifth Amendment in *State of California*, the Ninth Circuit misread this Court's decisions and, without engaging in any analysis of the Bill of Rights, mistakenly assumed that the Fifth Amendment protects states in condemnation proceedings. But as the Supreme Court made clear in *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 323, the Fifth Amendment was never intended to extend to government entities.

Finally, respondents contend that petitioners' reading of the Seventh Amendment would subject the right of jury trial to "potential uncertainty and discriminatory application" (States' Br., p. 19). But petitioners' test is straightforward and easily applied: the Seventh Amendment was intended to secure a right only to private parties; it was not intended to provide any government entity a right to jury trial under any circumstances.

CONCLUSION

For the foregoing reasons and for those stated in our opening brief, the petition for certiorari should be granted.

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